

1 **A BILL**

2 To modernize certain laws governing the civil service, and for other purposes.

3 *Be it enacted by the Senate and House of Representatives of the United States of America*
4 *in Congress assembled,*

5 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

6 (a) SHORT TITLE.—This Act may be cited as the “Working for America Act of 2005”.

7 (b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

8 Sec. 1. Short title; table of contents.

9 Sec. 2. Purpose.

10 **TITLE I—AUTHORITIES OF THE OFFICE OF PERSONNEL MANAGEMENT; MISCELLANEOUS**

11 **AUTHORITIES RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT**

12 Sec. 101. Office of Personnel Management.

13 Sec. 102. References to the General Schedule.

14 Sec. 103. Chief Human Capital Officers Council.

15 Sec. 104. Definitions; occupational structure of the civil service.

16 Sec. 105. Authority for surveys.

17 **TITLE II—RESULTS-DRIVEN, MARKET-BASED COMPENSATION**

18 Sec. 201. Performance appraisal.

19 Sec. 202. Strategic compensation system.

20 Sec. 203. Additional compensation amendments.

21 **TITLE III—STAFFING MODERNIZATION**

22 Sec. 301. Authority for employment.

23 Sec. 302. Examination, selection, and placement.

24 Sec. 303. Conforming and realigning amendments.

25 **TITLE IV—LABOR-MANAGEMENT RELATIONS; ADVERSE ACTIONS; APPEALS; MERIT SYSTEMS**

26 **PROTECTION BOARD**

27 Sec. 401. Labor-management relations.

28 Sec. 402. Adverse actions.

29 Sec. 403. Appeals.

30 Sec. 404. Merit Systems Protection Board.

31 **TITLE V—MISCELLANEOUS PROVISIONS**

1 Sec. 501. Savings provisions.
2 Sec. 502. Technical and conforming amendments; other references.
3 Sec. 503. Effective date; application.

4 **SEC. 2. PURPOSE.**

5 The purpose of this Act is to ensure agencies are equipped to better manage, develop, and
6 reward employees to better serve the American people. In order to improve that service, the Act
7 amends title 5, United States Code, to establish a system of Federal human resources
8 management that incorporates the following principles:

9 (1) Employees should have clear performance goals, opportunities for
10 professional growth, managers who help them succeed, and pay increases based on
11 performance rather than the passage of time;

12 (2) Any human resources management flexibilities shall be exercised in
13 accordance with the merit system principles and related core values, principles, and
14 protections of the American civil service including—

15 (A) protection against discrimination, political influence and personal
16 favoritism, and reprisal against whistleblowers;

17 (B) the right of employees to due process in adverse actions taken against
18 them;

19 (C) veterans' preference; and

20 (D) the right of employees, as provided by this Act, to organize, bargain
21 collectively, and participate through labor organizations of their own choosing in
22 decisions which affect them;

(3) Employees at all levels shall be accountable for their performance; and

(4) Agencies shall be accountable for meeting standards for effective human capital management in support of agency missions.

The Director of the Office of Personnel Management shall provide the coordination and oversight needed to ensure that human resources management flexibilities provided by this Act are established and exercised in a manner consistent with the principles set forth in this section.

**TITLE I—AUTHORITIES OF THE OFFICE OF PERSONNEL
MANAGEMENT; MISCELLANEOUS AUTHORITIES RELATING TO
FEDERAL HUMAN CAPITAL MANAGEMENT**

SEC. 101. OFFICE OF PERSONNEL MANAGEMENT.

Chapter 11 of title 5, United States Code, is amended—

(1) in section 1103—

(A) by amending subsection (a) to read as follows:

“(a) The following functions are vested in the discretion of the Director of the Office of Personnel Management, and shall be performed by the Director, or subject to section 1104, by such employees of the Office as the Director designates:

“(1) securing accuracy, uniformity, and faithful execution of the law in the functions of the Office;

“(2) appointing individuals to be employed by the Office;

“(3) directing and supervising employees of the Office, distributing business

1 among employees and organizational units of the Office, and directing the internal
2 management of the Office;

3 “(4) directing the preparation of requests for appropriations for the Office and the
4 use and expenditure of funds by the Office, including incurring official reception and
5 representation expenses of the Office, subject to any limitation prescribed in law;

6 “(5) aiding the President in preparing such civil service rules as the President
7 prescribes, and otherwise advising the President on actions which may be taken to
8 promote the strategic management of an efficient, effective, results-oriented civil service
9 and a systematic application of the merit system principles, including recommending
10 policies relating to the selection, training, promotion, transfer, performance,
11 compensation, conditions of service, tenure, and separation of employees;

12 “(6) executing, administering, and enforcing the civil service rules and regulations
13 of the President and the Office and the laws governing the civil service, except with
14 respect to functions for which the Merit Systems Protection Board, the Office of Special
15 Counsel, the Office of Government Ethics, the Federal Labor Relations Authority, the
16 Department of Labor, or the Equal Employment Opportunity Commission is primarily
17 responsible;

18 “(7) serving as a point of contact for Congress as directed by the President on
19 issues concerning the strategic management of human resources within the Executive
20 branch;

21 “(8) conducting broad systemic reviews of various aspects of Federal human

1 capital management;

2 “(9) designing, developing, and delivering human resources management
3 strategies, policies, and technical assistance that sustain agencies’ capacity to identify
4 their current and future workforce requirements; attract and appoint a high quality and
5 diverse workforce; train, develop, and deploy employees to their fullest capacity; hold
6 employees accountable for high standards of performance and conduct; offer employees
7 compensation that reinforces and rewards high performance; and provide employees and
8 annuitants and their dependents with benefits;

9 “(10) ensuring that the Office carries out its responsibilities with respect to the
10 Federal civil service by establishing and administering Governmentwide authorities,
11 systems, and programs and by carrying out responsibilities for the approval, certification,
12 or coordination of agency-specific authorities, systems, and programs established under
13 this title;

14 “(11) assisting agencies in establishing accountability systems and, when
15 necessary, informing the President of serious violations of merit system principles and
16 the laws governing the civil service and directing appropriate action;

17 “(12) leading the development and management of information technologies that
18 enhance human resources management strategies, policies, programs, and operations; and

19 “(13) chairing the Chief Human Capital Officers Council established under
20 section 1403 to facilitate interagency cooperation and action on common human
21 resources management concerns.”; and

(B) in subsection (c)–

(i) by striking “Office of Personnel Management” and inserting

“Director”; and

(ii) by striking “of Personnel Management”;

(2) in section 1104–

(A) in the catchline by striking “**personnel**” and inserting “**human resources**”; and

(B) in subsection (a)(1) by striking “personnel” and inserting “human resources”; and

(3) in the table of sections by amending the item relating to section 1104 to read as follows:

“1104. Delegation of authority for human resources management.”.

SEC. 102. REFERENCES TO THE GENERAL SCHEDULE.

Chapter 13 of title 5, United States Code, is amended–

(1) by amending section 1307 to read as follows:

“§1307. References to the General Schedule

“The Director of the Office of Personnel Management is authorized to interpret, in such form as the Director may determine, statutory references to–

“(1) ‘General Schedule employees’ or ‘employees covered by the General Schedule’ or references of a similar nature to determine coverage under provisions of this title or related statutes; and

1 “(2) a grade or grades of the General Schedule or other related terminology for
2 the purpose of determining equivalencies under other classification or pay systems.”; and

3 (2) in the table of sections by amending the item relating to section 1307 to read
4 as follows:

5 “1307. References to the General Schedule.”.

6 **SEC. 103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.**

7 Chapter 14 of title 5, United States Code, is amended—

8 (1) by adding a new section 1403 to read as follows:

9 **“§ 1403. Chief Human Capital Officers Council**

10 “(a) There is established a Chief Human Capital Officers Council, consisting of—

11 “(1) the Director of the Office of Personnel Management, who shall act as
12 chairperson of the Council;

13 “(2) the Deputy Director for Management of the Office of Management and
14 Budget, who shall act as vice chairperson of the Council; and

15 “(3) the Chief Human Capital Officers of Executive departments and any other
16 members who are designated by the Director of the Office of Personnel Management.

17 “(b) The Chief Human Capital Officers Council shall meet periodically to advise and
18 coordinate the activities of the agencies of its members on such matters as modernization of
19 human resources systems, improved quality of human resources information, and legislation
20 affecting human resources operations and organizations.

21 “(c) The Chief Human Capital Officers Council shall ensure that representatives of

Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

“(d) Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.”; and

(2) in the table of sections by adding at the end the following new item:

“1403. Chief Human Capital Officers Council.”.

SEC. 104. DEFINITIONS; OCCUPATIONAL STRUCTURE OF THE CIVIL SERVICE.

Chapter 21 of title 5, United States Code, is amended—

(1) by amending the chapter heading to read as follows:

“CHAPTER 21—DEFINITIONS; OCCUPATIONAL STRUCTURE OF THE CIVIL
SERVICE”;

(2) by redesignating sections 2101 through 2109 as subchapter I and inserting a new subchapter heading after the chapter heading to read as follows:

“SUBCHAPTER I—DEFINITIONS”;

(3) by inserting at the end of subchapter I as so redesignated the following new sections:

“§ 2110. Coordination

“For the purposes of this chapter and chapters 11, 43, and 52, except as otherwise provided in regulations prescribed by the Director of the Office of Personnel Management, ‘coordination’ means the process by which an agency, after appropriate staff-level consultation, officially provides the Office with written notice of a proposed action and intended effective

date. If the Director concurs, or does not respond within 30 days of the Office's receipt of that notice, the agency may proceed with the proposed action. If the Director indicates any aspect of the proposed action may have Governmentwide implications, the agency shall not proceed with that matter while it remains unresolved.

“§ 2111. Implementing directives

“For purposes of this title, ‘implementing directives’ means rules issued by the agency head or designee at the agency headquarters level to carry out any policy or procedure established in accordance with this title; these directives may apply agency-wide or to any part of the agency as determined by the agency at its sole and exclusive discretion.”;

(4) by inserting after section 2111 the following new subchapter:

“SUBCHAPTER II—OCCUPATIONAL STRUCTURE OF THE CIVIL SERVICE

“§ 2121. Responsibilities of the Director of the Office of Personnel Management

“(a) Except as provided by regulations prescribed by the Director of the Office of Personnel Management or prescribed pursuant to chapter 97 or 99, the Director shall define occupational series in the civil service. Such definitions shall be published in such form as the Director may determine.

“(b) The Director may designate categories of occupational series for such purposes as the Director may determine necessary.

“(c) The Director may prescribe regulations to carry out his or her responsibilities under this section, including regulations to administer provisions of this title that affect only certain occupations.

1 **“§ 2122. Agency responsibilities**

2 “(a) An agency, on the request of the Director of the Office of Personnel Management,
3 shall furnish information for, and cooperate in, defining and designating occupational series and
4 occupational categories. An agency whose authority to classify positions is established in a
5 provision of law other than chapter 51 or 52 shall ensure that it provides the Director with
6 whatever information the Director needs in order to determine the numbers of employees and
7 positions in such agency that are within each occupational series the Director has defined under
8 section 2121.

9 “(b) For purposes of this subchapter, ‘agency’ includes any Federal agency with civilian
10 employees who are covered by any provision of this title, including the Smithsonian Institution,
11 but does not include—

12 “(1) the United States Postal Service;

13 “(2) the Postal Rate Commission;

14 “(3) the Central Intelligence Agency; or

15 “(4) any other elements of the intelligence community, as defined in section 3(4)
16 of the National Security Act of 1947, as amended (50 U.S.C. 401a(4)), that are
17 designated by the Director of National Intelligence.”; and

18 (5) by amending the table of sections to read as follows:

**“CHAPTER 21—DEFINITIONS; OCCUPATIONAL STRUCTURE OF THE CIVIL
SERVICE**

“SUBCHAPTER I—DEFINITIONS

“2101. Civil service; armed forces; uniformed services.

“2101a. The Senior Executive Service.

“2102. The competitive service.

“2103. The excepted service.

“2104. Officer.

“2105. Employee.

“2106. Member of Congress.

“2107. Congressional employee.

“2108. Veteran; disabled veteran; preference eligible.

“2109. Air traffic controller; Secretary.

“2110. Coordination.

“2111. Implementing directives.

SUBCHAPTER II—OCCUPATIONAL STRUCTURE OF THE CIVIL SERVICE

“2121. Responsibilities of the Director of the Office of Personnel Management.

“2122. Agency responsibilities.”.

SEC. 105. AUTHORITY FOR SURVEYS.

Chapter 29 of title 5, United States Code, is amended—

(1) by amending section 2951 to read as follows:

“§ 2951. Reports to the Office of Personnel Management

“(a) An agency shall report to the Office of Personnel Management, at regular intervals and in accordance with standards issued by the Director of that Office, information relating to positions and employees in the agency. The Director shall prescribe the form and frequency of these reports.

“(b)(1) Except as provided in paragraph (2), for purposes of this section, ‘agency’ means

any Federal agency with civilian employees who are subject to any provision of this title, including the Smithsonian Institution.

“(2)(A) Except as provided in subparagraph (B), the President or the Director may exempt from subsection (a) an agency or group of employees within an agency, when the President or Director determines, in a writing published in the Federal Register, that the public interest warrants such an exemption.

“(B) Subsection (a) shall not apply to the Central Intelligence Agency, or any other elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947, as amended (50 U.S.C. 401a(4)), that are designated by the Director of National Intelligence.”;

(2) by amending the heading for subchapter II to read as follows:

“SUBCHAPTER II—REPORTS AND SURVEYS”;

(3) by adding a new section 2955 at the end to read as follows:

“§ 2955. Employee surveys

“(a) Each Executive agency shall conduct an annual survey of its employees (including survey questions unique to the agency and questions prescribed under subsection (b)) to assess—

“(1) metrics established under section 1103(c), as appropriate;

“(2) leadership and management practices that contribute to agency performance;

and

“(3) employee satisfaction with—

“(A) leadership policies and practices;

1 “(B) work environment;

2 “(C) rewards and recognition for professional accomplishment and
3 personal contributions to achieving organizational mission;

4 “(D) opportunity for professional development and growth; and

5 “(E) opportunity to contribute to achieving organizational mission.

6 “(b) The Director of the Office of Personnel Management, in consultation with the Chief
7 Human Capital Officers Council and with the concurrence of the Director of the Office of
8 Management and Budget, shall prescribe, in such form as the Director determines appropriate,
9 survey questions that shall appear on all agency surveys under subsection (a) in order to allow a
10 comparison across agencies.

11 “(c) The results of the agency surveys under subsection (a) shall be made available to the
12 public and posted on the website of the agency involved, unless the head of the agency
13 determines that doing so would jeopardize or negatively impact national security.

14 “(d) Notwithstanding any other provision of this section, the Director may waive the
15 requirement in subsection (a) with respect to an agency when the Director determines the
16 requirement—

17 “(1) would create a substantial hardship; or

18 “(2) is not in the best interests of the Federal Government.

19 “(e) Notwithstanding the preceding subsections, this section shall not apply to employees
20 of the Central Intelligence Agency, or any other elements of the intelligence community, as
21 defined in section 3(4) of the National Security Act of 1947, as amended (50 U.S.C. 401a(4)),

that are designated by the Director of National Intelligence.”; and

(4) by amending the table of sections for subchapter II to read as follows:

“SUBCHAPTER II—REPORTS AND SURVEYS

“2951. Reports to the Office of Personnel Management.

“2952. Time of making annual reports.

“2953. Reports to Congress on additional employee requirements.

“2954. Information to committees of Congress on request.

“2955. Employee surveys.”.

TITLE II—RESULTS-DRIVEN, MARKET-BASED

COMPENSATION

SEC. 201. PERFORMANCE APPRAISAL.

Chapter 43 of title 5, United States Code, is amended—

(1) by amending subchapter I to read as follows:

“SUBCHAPTER I—GENERAL PROVISIONS

“§ 4301. Authority

“In accordance with regulations issued by, and subject to coordination with, the Director of the Office of Personnel Management, each agency shall establish performance appraisal systems to promote high performance and may administer and maintain such systems electronically.

“§ 4302. Coverage

“(a) Except as provided by subsection (b), this chapter applies to all positions and employees of an Executive agency and the Government Printing Office.

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1 “(b) Except as provided by subsection (c), this chapter shall not apply to—

2 “(1) employees of the Department of Defense covered by the National Security
3 Personnel System established under chapter 99 or employees of the Department of
4 Homeland Security covered by the human resources management system established
5 under chapter 97;

6 “(2) employees of a Government controlled corporation;

7 “(3) employees of the Government Accountability Office;

8 “(4) employees of the Central Intelligence Agency, or any other elements of the
9 intelligence community, as defined in section 3(4) of the National Security Act of 1947,
10 as amended (50 U.S.C. 401a(4)), that are designated by the Director of National
11 Intelligence;

12 “(5) employees outside the United States who are paid in accordance with local
13 native prevailing wage rates for the area in which employed;

14 “(6) individuals in the Foreign Service of the United States;

15 “(7) physicians, dentists, nurses, and other employees in the Veterans Health
16 Administration of the Department of Veterans Affairs whose pay is fixed under chapter
17 74 of title 38;

18 “(8) administrative law judges appointed under section 3105;

19 “(9) individuals appointed by the President;

20 “(10) employees specifically exempted by law from this chapter; or

21 “(11) individuals occupying positions excluded from coverage of this chapter by

1 regulations of the Director of the Office of Personnel Management.

2 “(c) Notwithstanding any other provision of this chapter, an otherwise excluded category
3 of employees may be covered under this chapter with the joint approval of the Director and the
4 agency responsible for the performance management of such employees.

5 **“§ 4303. Definitions**

6 “For the purpose of this chapter–

7 “(1) ‘coordination’ has the meaning given that term in section 2110;

8 “(2) ‘Director’ means the Director of the Office of Personnel Management;

9 “(3) ‘employee’ has the meaning given that term in section 2105; and

10 “(4) ‘Office’ means the Office of Personnel Management;

11 **“§ 4304. Responsibilities of the Director of the Office of Personnel Management**

12 “(a) The Director, from time to time, may review each performance appraisal system
13 established under this chapter by any agency to determine whether the system meets the
14 requirements of this chapter.

15 “(b) If the Director determines that a performance appraisal system does not meet the
16 requirements of this chapter or of regulations prescribed under this chapter, the Director shall
17 direct the agency to implement an appropriate system or to take any other corrective action; and
18 any such agency shall take any action so required.

19 **“§ 4305. Regulations**

20 “The Director shall prescribe regulations to carry out the purpose of this chapter.”;

21 (2) by redesignating–

(A) subchapter II as subchapter III; and

(B) sections 4311– 4315 as sections 4321– 4325, respectively;

(3) by inserting after subchapter I the following new subchapter:

“SUBCHAPTER II—PERFORMANCE APPRAISAL FOR THE GENERAL
WORKFORCE

“§ 4311. Definitions; application

“(a) For purposes of this subchapter—

“(1) ‘performance appraisal system’ means the policies and procedures established by a covered agency in accordance with this chapter and regulations of the Director for setting and communicating performance expectations, monitoring performance and providing feedback, developing performance and addressing poor performance, and rating performance;

“(2) ‘performance expectations’ means the duties, responsibilities, and competencies required by, or objectives associated with, an employee’s position and the contributions and demonstrated competencies management expects of an employee, as described in regulations of the Director;

“(3) ‘rating of record’ means a performance appraisal that includes the assignment of a summary rating level as described in section 4315(a) prepared—

“(A) at the end of an appraisal period covering an employee’s performance over the applicable period; or

“(B) to support a pay determination made in accordance with chapter 52

1 or other applicable provisions; and

2 “(4) ‘unacceptable performance’ means performance of an employee which fails
3 to meet one or more performance expectations, as amplified through work assignments or
4 other instructions, for which the employee is held individually accountable.

5 “(b) This subchapter applies to any employee who is not excluded by section 4302(b),
6 but does not apply to an individual who is employed in a Senior Executive Service position as
7 defined in section 3132(a)(2).

8 **“§ 4312. Performance appraisal systems**

9 “(a) Subject to any regulations the Director may prescribe, each performance appraisal
10 system shall provide for–

11 “(1) setting and communicating performance expectations;

12 “(2) monitoring performance and providing timely feedback;

13 “(3) developing employee performance and addressing poor performance;

14 “(4) rating the performance of each employee, generally once a year, based on
15 performance expectations;

16 “(5) holding supervisors and managers accountable for effectively managing the
17 performance of employees under their supervision as set forth in subsection (b); and

18 “(6) involving employees in the development and implementation of the system.

19 “(b) In fulfilling the requirements of subsection (a), supervisors and managers are
20 accountable for–

21 “(1) clearly communicating performance expectations and holding employees

1 accountable for accomplishing them;

2 “(2) making meaningful distinctions among employees based on performance;

3 “(3) fostering and rewarding excellent performance;

4 “(4) addressing poor performance; and

5 “(5) assuring that employees are assigned a rating of record as required by
6 regulations of the Director and agency implementing directives.

7 **“§ 4313. Performance expectations**

8 “(a) Performance expectations shall be communicated in writing at the beginning of the
9 appraisal period and shall support and align with agency mission and strategic goals,
10 organizational program and policy objectives, annual performance plans, results, and other
11 measures of performance.

12 “(b) Performance expectations for supervisors and managers shall include planning,
13 assessing, monitoring, developing, correcting, rating, and rewarding subordinate employees’
14 performance.

15 “(c) Performance expectations may be amplified through particular work assignments or
16 other instructions which need not be in writing.

17 “(d) Supervisors shall involve employees, insofar as practicable, in the development of
18 their performance expectations. However, final decisions regarding performance expectations
19 are within the sole and exclusive discretion of management.

20 **“§ 4314. Addressing poor performance**

21 “(a) If during the appraisal period a supervisor determines that an employee’s

1 performance is unacceptable, the supervisor shall–

2 “(1) consider the range of options available to address the performance
3 deficiency, which include but are not limited to remedial training, an improvement
4 period, a reassignment, an oral warning, a letter of counseling, a written reprimand, or an
5 adverse action specified in chapter 75; and

6 “(2) take appropriate action to address the deficiency.

7 “(b) As specified in section 7512, an employee may appeal an adverse action based on
8 unacceptable performance to the Merit Systems Protection Board.

9 **“§ 4315. Rating performance**

10 “(a) Agency performance appraisal systems–

11 “(1) shall establish a summary rating level of unacceptable performance, a
12 summary rating level of fully successful performance (or equivalent), and at least one
13 summary rating level above fully successful performance for employees other than those
14 in an Entry/Developmental band established under section 5212; and

15 “(2) may establish two summary rating levels: an unacceptable rating level and a
16 rating level of fully successful (or equivalent) for employees in an Entry/Developmental
17 band established under section 5212.

18 “(b) A rating of record shall be used as a basis for–

19 “(1) a pay determination under chapter 52 or other applicable pay provisions;

20 “(2) awards under an agency awards program as authorized under chapter 45 or
21 other applicable legal authority;

“(3) eligibility for promotion;

“(4) granting additional service credit in a reduction in force; and

“(5) such other action that the agency considers appropriate, or as required by regulations of the Director.

“(c) Agencies may not impose fixed numeric or percentage limitations on the assignment of any summary rating level or levels.”; and

(4) by amending the table of sections to read as follows:

“CHAPTER 43—PERFORMANCE APPRAISAL

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

“4301. Authority.

“4302. Coverage.

“4303. Definitions.

“4304. Responsibilities of the Director of the Office of Personnel Management.

“4305. Regulations.

“SUBCHAPTER II—PERFORMANCE APPRAISAL FOR THE GENERAL WORKFORCE

“4311. Definitions; application.

“4312. Performance appraisal systems.

“4313. Performance expectations.

“4314. Addressing poor performance.

“4315. Rating performance.

“SUBCHAPTER III—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

“4321. Definitions.

“4322. Senior Executive Service performance appraisal systems.

“4323. Criteria for performance appraisals.

“4324. Ratings for performance appraisals.

“4325. Regulations.”.

SEC. 202. STRATEGIC COMPENSATION SYSTEM.

Title 5, United States Code, is amended by inserting after chapter 51 the following new chapter:

“CHAPTER 52—STRATEGIC COMPENSATION SYSTEM

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

“5201. Purpose.

“5202. Eligibility and coverage.

“5203. Preemption.

“5204. Relationship to other provisions.

“5205. Definitions.

“5206. Bar on collective bargaining.

“5207. Continuing collaboration.

“5208. Responsibilities of the Director of the Office of Personnel Management and agencies.

“5209. Alternative strategic compensation systems.

“SUBCHAPTER II—CORE POSITION CLASSIFICATION SYSTEM

“5211. General provisions.

“5212. Classification structure.

“5213. Classifying positions.

“5214. Review of classification of positions.

“5215. Reconsideration of classification decisions.

“SUBCHAPTER III—CORE PAY SYSTEM

“5221. General provisions.

“5222. Pay limitations.

“5223. Federal Pay Council.

“SUBCHAPTER IV—CORE PAY SYSTEM; RATE RANGES

“5231. Rate ranges.

“5232. Setting and adjusting rate ranges.

“5233. Eligibility for pay increase associated with a rate range adjustment.

“5234. Treatment of an employee with a rating of record below fully successful.

“SUBCHAPTER V—CORE PAY SYSTEM; LOCAL AND SPECIAL MARKET SUPPLEMENTS

- “5241. General provisions.
- “5242. Local market supplements.
- “5243. Special market supplements.
- “5244. Setting and adjusting local and special market supplements.
- “5245. Eligibility for pay increase associated with a supplement adjustment.
- “5246. Treatment of an employee with a rating of record below fully successful.

“SUBCHAPTER VI—CORE PAY SYSTEM; PERFORMANCE-BASED PAY

- “5251. Purpose.
- “5252. Performance pay increases.
- “5253. Within-band reductions.
- “5254. Special within-band increases.
- “5255. Developmental pay adjustments.
- “5256. Performance-based cash awards.
- “5257. Certification of pay-for-performance systems.

“SUBCHAPTER VII—CORE PAY SYSTEM; PAY ADMINISTRATION

- “5261. Setting an employee’s starting pay.
- “5262. Use of highest previous rate.
- “5263. Setting pay upon promotion.
- “5264. Setting pay upon demotion.
- “5265. Setting pay upon movement to a different career/occupational group.
- “5266. Pay retention.
- “5267. Miscellaneous.

“SUBCHAPTER VIII—CORE PAY SYSTEM; SPECIAL PAYMENTS

- “5271. Special payments.

“CHAPTER 52—STRATEGIC COMPENSATION SYSTEM

“SUBCHAPTER I—GENERAL PROVISIONS

“§ 5201. Purpose

“(a) This chapter establishes a core compensation system for covered Federal employees and permits agencies to establish, in accordance with section 5209, alternative strategic

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1 compensation systems. The core compensation system is designed to provide contemporary and
2 flexible position classification and performance-based pay. A primary goal of the system is to
3 allow for the strategic allocation of resources to meet mission needs and priorities, taking into
4 account staffing conditions, labor market conditions, employee and organizational performance,
5 and other relevant factors. The core compensation system and any alternative strategic
6 compensation systems established under this chapter are designed to be mission-centered and
7 performance-focused; to generate respect and trust through employee involvement; and to be
8 based on the merit system principles established under section 2301. In implementing a strategic
9 compensation system under this chapter, an agency may establish policies and procedures to
10 address agency-specific mission requirements or policy goals.

11 “(b) A position classification system established under subchapter II of this chapter or
12 section 5209 shall replace, for covered employees and positions, any such classification system
13 established under other authority, including but not limited to chapter 51 and subchapter IV of
14 chapter 53.

15 “(c) A pay system established under subchapters III through VIII of this chapter or
16 section 5209 shall replace, for covered employees and positions, any pay system established
17 under other authority, including but not limited to chapter 53 (except to the extent that chapter 53
18 provisions continue in effect as provided in section 5203).

19 “(d) The authorities provided by this chapter shall be exercised in a manner consistent
20 with the merit system principle of providing equal pay for work of equal value and appropriate
21 incentives and recognition for excellence in performance, taking into account—

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1 “(1) duties and responsibilities of the position, mission requirements, and
 2 qualification requirements (considering the levels of difficulty, accountability, and other
 3 appropriate factors associated with any position);

4 “(2) levels of employee performance (including demonstrated competencies and
 5 contributions to mission accomplishments and other appropriate factors); and

6 “(3) rates of pay paid by other agencies and employers in the labor market (based
 7 on type of work, location, employee performance, and other appropriate factors).

8 “(e) To ensure that this chapter’s purposes are accomplished, this chapter shall be
 9 interpreted in a way that recognizes each agency’s critical missions. Each provision of this
 10 chapter shall be construed to promote the efficient and effective day-to-day accomplishment of
 11 those missions, as defined by the agency. The interpretation of this chapter and implementing
 12 regulations issued by the Director shall be accorded great deference.

13 **“§ 5202. Eligibility and coverage**

14 “(a)(1) Notwithstanding section 5205(2), for purposes of this subsection, ‘agency’
 15 means—

16 “(A) an Executive agency;

17 “(B) the Library of Congress;

18 “(C) the Botanic Garden;

19 “(D) the Government Printing Office; and

20 “(E) the Office of the Architect of the Capitol.

21 “(2)(A) Except as provided by subparagraph (B), an employee of an agency shall become

1 subject to this chapter as provided in paragraph (3).

2 “(B) Except as provided by subsections (b) and (c), the following employees are
3 excluded from this chapter:

4 “(i) employees of the Department of Defense or the Department of Homeland
5 Security;

6 “(ii) employees of a Government controlled corporation, the Tennessee Valley
7 Authority; the Nuclear Regulatory Commission; or the Federal Energy Regulatory
8 Commission;

9 “(iii) employees of the Board of Governors of the Federal Reserve System; the
10 Federal Deposit Insurance Corporation; the Office of the Comptroller of the Currency;
11 the National Credit Union Administration; the Office of Thrift Supervision; the Farm
12 Credit Administration; the Federal Housing Finance Board; the Securities and Exchange
13 Commission; or the Commodity Futures Trading Commission;

14 “(iv) employees of the Government Accountability Office;

15 “(v) employees of the Central Intelligence Agency, the Federal Bureau of
16 Investigation Intelligence Career Service, or any other elements of the intelligence
17 community, as defined in section 3(4) of the National Security Act of 1947, as amended
18 (50 U.S.C. 401a(4));

19 “(vi) employees who are covered by the Executive Schedule established by
20 subchapter II of chapter 53 or similar employees whose rate of pay is fixed by law at an
21 Executive Schedule rate;

1 “(vii) members of the Senior Executive Service established under subchapter II of
2 chapter 31, members of the Federal Bureau of Investigation and Drug Enforcement
3 Administration Senior Executive Service established under subchapter III of chapter 31,
4 and employees in certain senior-level and scientific and professional positions paid under
5 section 5376;

6 “(viii) administrative law judges paid under section 5372; contract appeals board
7 members paid under section 5372a; and administrative appeals judges paid under section
8 5372b;

9 “(ix) members of the Foreign Service whose pay is fixed under the Foreign
10 Service Act of 1980 and positions in or under the Department of State which are—

11 “(I) connected with the representation of the United States to international
12 organizations; or

13 “(II) specifically exempted by statute from this chapter or another position
14 classification or pay statute;

15 “(x) physicians, dentists, nurses, and other employees in the Veterans Health
16 Administration of the Department of Veterans Affairs whose pay is fixed under chapter
17 73 of title 38;

18 “(xi) employees of the Government Printing Office whose pay is fixed under
19 section 305 of title 44;

20 “(xii) aliens or noncitizens of the United States who occupy positions outside the
21 United States;

1 “(xiii) employees who serve without pay or at nominal rates of pay;

2 “(xiv) employees whose pay is not wholly from appropriated funds of the United
3 States (other than employees of the Federal Retirement Thrift Investment Management
4 System appointed under section 8474(c)(2) and employees whose rates of pay are
5 determined under section 5342), except that with respect to the Veterans' Canteen
6 Service, Department of Veterans Affairs, this paragraph applies only to employees
7 necessary for the transaction of the business of the Service at canteens, warehouses, and
8 storage depots whose employment is authorized by section 7802 of title 38;

9 “(xv) employees whose pay is fixed under a cooperative agreement between the
10 United States and—

11 “(I) a State or territory or possession of the United States, or a political
12 subdivision thereof; or

13 “(II) an individual or organization outside the service of the Government
14 of the United States;

15 “(xvi) student nurses, medical or dental interns, residents-in-training, student
16 dietitians, student physical therapists, student occupational therapists, and other student
17 employees, assigned or attached to a hospital, clinic, or laboratory primarily for training
18 purposes, whose pay is fixed under subchapter V of chapter 53 of this title or sections
19 7405 and 7406 of title 38;

20 “(xvii) inmates, patients, or beneficiaries receiving care or treatment or living in
21 Government agencies or institutions;

1 “(xviii) experts or consultants appointed under section 3109;

2 “(xix) employees employed on a fee, contract, or piece work basis;

3 “(xx) employees who may lawfully perform their duties concurrently with their
4 private profession, business, or other employment, and whose duties require only a
5 portion of their time, when, except for determinations regarding expected actual days of
6 service necessary for appointment as a special Government employee (as defined in
7 section 202(a) of title 18), it is impracticable to ascertain or anticipate the proportion of
8 time devoted to the service of the Government of the United States;

9 “(xxi) administrative patent judges and designated administrative patent judges in
10 the United States Patent and Trademark Office;

11 “(xxii) temporary positions in the Bureau of the Census established under section
12 23 of title 13, and enumerator positions in the Bureau of the Census;

13 “(xxiii) employees of the Office of the Architect of the Capitol whose rate of pay
14 is fixed by another statute; and

15 “(xxiv) any other employees in a category that is expressly excluded by statute, or
16 through exercise of an express statutory authority, from coverage under chapter 51 or this
17 chapter.

18 “(C) Notwithstanding subparagraph (B), the only employees of the Office of the
19 Architect of the Capitol who are excluded from this chapter by this paragraph are those
20 employees described in clause (xxiii) of such subparagraph.

21 “(3)(A) An employee referred to in paragraph (2)(A) who is eligible for coverage shall

1 become subject to this chapter on the effective date determined by the agency, but in no case
2 later than the first day of the first pay period beginning on or after January 1, 2010. An agency
3 may establish different effective dates for different categories of employees in order to phase in
4 coverage. Each agency shall inform the Office in advance regarding the affected categories of
5 employees and the effective dates of their coverage.

6 “(B) An employee subject to this chapter shall be covered under a pay-for-performance
7 system established under subchapter VI or section 5209 only after such system has been certified
8 by the Director as provided in section 5257.

9 “(b) An agency may, at its sole and exclusive discretion, request that the Director
10 approve coverage under this chapter for a category of employees not covered by subsection (a),
11 provided that the pay-for-performance system covering that category of employees meets the
12 requirements of section 5257 as certified by the Director. The agency responsible for the
13 position classification and pay system for such category of employees shall determine the
14 effective date of such coverage.

15 “(c)(1) The Director may extend coverage under this chapter to a category of employees
16 not covered by subsection (a) who are employed in law enforcement positions provided that the
17 pay-for-performance system covering that category of employees meets the requirements of
18 section 5257 as certified by the Director. Such positions shall constitute one or more career/
19 occupational groups within the core position classification system and core pay system
20 established under subchapters II through VIII of this chapter, except as provided by section
21 5209.

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1 “(2) For the purposes of this section, the term ‘law enforcement position’ means a
2 position so defined under regulations prescribed by the Director, with the concurrence of the
3 Attorney General and in consultation with other law enforcement agencies. The Director shall
4 have broad discretion in defining or applying the term, and may take into account any additional
5 factor or factors it considers relevant to the law enforcement human capital needs of the
6 Government. The regulations may specify that a position meets the definition of ‘law
7 enforcement position’ for specified purposes, and may exclude it for other purposes. The
8 Director may, for one or more purposes, limit the definition to positions that, as determined by
9 the Director and in comparison to positions generally, have rigorous physical requirements such
10 that a substantially higher proportion of incumbents would not be expected to be able to
11 complete a full career through retirement under the generally applicable age and service
12 requirements. The determinations of the Director as to which positions meet the definition, and
13 for which purposes, shall be final, and not subject to review.

14 “(3) The Director, with the concurrence of the Attorney General and in consultation with
15 other law enforcement agencies, shall ensure that rates of pay established under this title for law
16 enforcement and related positions shall be consistent.

17 “(4) The Director shall determine the effective date of coverage under this subsection,
18 except that such effective date may be no earlier than 6 months after public notice of the
19 Director’s coverage decision.

20 “(d) The Director shall determine finally the applicability of this chapter to specific
21 positions and employees, except for positions and employees in the Office of the Architect of the

1 Capitol.

2 **“§ 5203. Preemption**

3 “(a) Notwithstanding any other provision of law, for any category of employees and
4 positions covered by this chapter, the following provisions of law are preempted and replaced by
5 this chapter (except as provided in subsection (b) and section 5204):

6 “(1) chapter 51;

7 “(2) chapter 53; and

8 “(3) classification and pay provisions prescribed in other laws, or established
9 under authority of other laws, that apply to employees and positions that are covered by
10 this chapter in accordance with section 5202(b) or (c).

11 “(b) The following provisions of chapter 53 are not preempted:

12 “(1) section 5307, dealing with the aggregate limitation on pay;

13 “(2) sections 5311 through 5318, dealing with Executive Schedule positions;

14 “(3) section 5371, insofar as it authorizes the Director to apply the provisions of
15 chapter 74 of title 38 to employees in health care positions covered by section 5371 in
16 lieu of any pay system established under this chapter or the following provisions:
17 chapters 51, 53, and 61, and subchapter V of chapter 55; the reference to ‘chapter 51’ in
18 section 5371 is deemed to include a position classification system established under this
19 chapter;

20 “(4) section 5372, dealing with administrative law judges;

21 “(5) section 5372a, dealing with members of contract appeals boards;

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1 “(6) section 5372b, dealing with administrative appeals judges;

2 “(7) section 5376, dealing with certain senior-level and scientific and professional

3 positions;

4 “(8) section 5377, dealing with the critical pay authority;

5 “(9) section 5379, dealing with student loan repayments; and

6 “(10) sections 5382 through 5385, dealing with members of the Senior Executive

7 Service.

8 **“§ 5204. Relationship to other provisions**

9 “(a) For the purpose of applying provisions of law or regulations that refer to preempted
10 provisions under chapters 51 and 53, the references to such preempted provisions are deemed to
11 be references to corresponding provisions of this chapter, except as otherwise provided in this
12 chapter (including subsection (b)) or in regulations of the Director. If a provision of law or
13 regulation requires coverage under chapter 51 or 53 (or a specific provision thereof), employees
14 covered by this chapter are deemed to be covered by chapter 51 or 53 (or a specific provision
15 thereof) for the purpose of applying that provision. Those provisions include, but are not limited
16 to, the following:

17 “(1) foreign language awards for law enforcement officers under sections 4521
18 through 4523;

19 “(2) the higher aggregate pay limit under section 5307 for employees paid under
20 section 5376 (which shall apply to employees in senior-level and scientific and
21 professional positions, as defined under section 3104);

1 “(3) pay for firefighters under section 5545b;

2 “(4) differentials for duty involving physical hardship or hazard under section

3 5545(d);

4 “(5) recruitment, relocation, and retention payments under sections 5753 through

5 5754; and

6 “(6) physicians’ comparability allowances under section 5948.

7 “(b) When a specified category of employees is covered by a classification and pay
8 system established under this chapter, the following provisions do not apply to such employees:

9 “(1) time-in-grade restrictions that apply to competitive service General Schedule
10 positions under regulations of the Director;

11 “(2) supervisory differentials under section 5755; and

12 “(3) law enforcement officer special rates under section 403 of the Federal
13 Employees Pay Comparability Act of 1990.

14 “(c) For a category of employees covered by this chapter in accordance with section
15 5202(b)-(c), the responsible agency may, subject to coordination with the Office, prescribe
16 regulations governing the meaning of any references in law or regulation to provisions in the
17 formerly applicable classification and pay system.

18 **“§ 5205. Definitions**

19 “For the purpose of this chapter–

20 “(1) ‘48 contiguous States’ means the States of the United States, excluding

21 Alaska and Hawaii, but including the District of Columbia;

1 “(2) ‘agency’ means an Executive agency, a legislative branch agency identified
2 in section 5202(a)(1), or any agency whose employees are covered by this chapter in
3 accordance with section 5202(b) or (c);

4 “(3) ‘alternative compensation system’ means a position classification and pay
5 system established under section 5209 that deviates from the core compensation system,
6 in whole or in part;

7 “(4) ‘band’ means a work level and associated rate range within a career/
8 occupational group or subgroup;

9 “(5) ‘basic pay’ means an employee’s rate of pay before any deductions and
10 exclusive of additional pay of any kind, except as expressly provided by law or
11 regulation; for the specific purposes prescribed in sections 5242(c) and 5243,
12 respectively, basic pay includes local and special market supplements;

13 “(6) ‘career/occupational group’ or ‘group’ means a grouping of one or more
14 associated or related occupations or positions; a career/occupational group may include
15 more than one career/occupational subgroup and series;

16 “(7) ‘career/occupational subgroup’ or ‘subgroup’ means a grouping of one or
17 more associated or related occupations or positions within a particular career/
18 occupational group, each with a set of bands and associated rate ranges; a career/
19 occupational subgroup may include more than one occupational series;

20 “(8) ‘classification’ means the analysis and assignment of a position to an
21 occupational series, group, subgroup (if applicable), and band for pay and other related

1 purposes;

2 “(9) ‘competencies’ means the measurable or observable knowledge, skills,
3 abilities, behaviors, and other characteristics required for success in a position;

4 “(10) ‘coordination’ has the meaning given that term in section 2110;

5 “(11) ‘core compensation system’ means the core position classification system
6 under subchapter II and the core pay system under subchapters III through VIII;

7 “(12) ‘demotion’ means a reduction to a lower band within the same career/
8 occupational subgroup (or group if there are no subgroups) or a reduction to a lower band
9 in a different career/occupational group or to a different subgroup in the same
10 career/occupational group under regulations issued by the Office;

11 “(13) ‘Director’ means the Director of the Office of Personnel Management;

12 “(14) ‘employee’ means an employee within the meaning of that term in section
13 2105;

14 “(15) ‘fully successful’ (in connection with a rating of record) means a summary
15 rating level of fully successful performance (or equivalent) as required by section 4315;

16 “(16) ‘General Schedule’ means the General Schedule classification and pay
17 system established under chapter 51 and subchapter III of chapter 53;

18 “(17) ‘implementing directives’ has the meaning given that term in section 2111;

19 “(18) ‘local market supplement’ means a geographic-based addition to basic pay,
20 as described in section 5242;

21 “(19) ‘modal rating’ means the most frequent rating of record assigned to

1 employees in the same pay band within a particular pay pool for a particular rating cycle;

2 “(20) ‘occupational series’ means an occupation defined by the Director under
3 section 2121, including the numerical code assigned to such series for identification
4 purposes;

5 “(21) ‘Office’ means the Office of Personnel Management;

6 “(22) ‘pay-for-performance system’ means the policies and procedures
7 established under subchapter VI or section 5209 for allocating performance pay
8 increases, operating in conjunction with the performance appraisal system established
9 under chapter 43, to ensure that higher performance is rewarded with higher pay;

10 “(23) ‘pay pool’ means the amount designated for performance pay increases to
11 employees covered by such pay pool;

12 “(24) ‘position’ means the work, consisting of the duties, responsibilities, and
13 related competency requirements, assignable to an employee;

14 “(25) ‘promotion’ means an increase to a higher band within the same career/
15 occupational group or an increase to a higher band in a different career/occupational
16 group under agency implementing directives pursuant to section 5263;

17 “(26) ‘rate range’ means the range of rates of basic pay (excluding any local or
18 special market supplements) applicable to employees in a particular band, as described in
19 section 5231; each rate range is defined by a minimum and maximum rate;

20 “(27) ‘rating of record’ has the meaning given that term in section 4311(a)(3);

1 “(28) ‘special market supplement’ means an addition to basic pay for a particular
2 category of employees to address staffing problems, as described in section 5243; a
3 special market supplement is paid in place of any lesser local market supplement that
4 would otherwise apply; and

5 “(29) ‘unacceptable performance’ has the meaning given that term in section
6 4311(a)(4).

7 **“§ 5206. Bar on collective bargaining**

8 “(a) Notwithstanding the provisions of chapter 71, any position classification system or
9 pay system, including a pay-for-performance system, established under the authority of this
10 chapter is not subject to collective bargaining. This bar on collective bargaining applies to all
11 aspects of the core compensation system or any alternative compensation system, including but
12 not limited to coverage determinations, classification structure, classification methods and
13 criteria, the setting and adjustment of pay levels, pay administration rules and policies, and
14 administrative procedures and arrangements.

15 “(b) Any system established under this chapter shall immediately supersede, and render
16 unenforceable, any conflicting provision of any collective bargaining agreement.

17 **“§ 5207. Continuing collaboration**

18 “(a) Each agency with employees covered by this chapter shall provide representatives of
19 such employees with an opportunity to participate in the development of agency implementing
20 directives through a continuing collaboration process. This process is not subject to the
21 requirements established by chapter 71.

1 “(b)(1) For the purpose of this section, the terms ‘employee representatives’ and
2 ‘representative’ include representatives of labor organizations with exclusive recognition rights
3 for units of agency employees, as well as representatives of employees who are not within a unit
4 for which a labor organization has exclusive recognition.

5 “(2) The agency shall determine the number of employee representatives to be engaged in
6 the continuing collaboration process.

7 “(3) Each national labor organization with multiple collective bargaining units accorded
8 exclusive recognition shall determine how its units shall be represented within the limitations
9 imposed by the agency.

10 “(c)(1) Within timeframes specified by the agency, subject to regulations prescribed by
11 the Director, employee representatives shall be provided with an opportunity to submit written
12 comments, to discuss their views with agency officials, or both, regarding proposed
13 implementing directives.

14 “(2) As the agency determines necessary, employee representatives shall be provided
15 with an opportunity to discuss their views with agency officials or to submit written comments
16 upon initial identification of implementation issues and conceptual design, or upon review of
17 draft recommendations or alternatives, or both.

18 “(d) Employee representatives shall be provided with access to information to make their
19 participation in the continuing collaboration process productive.

20 “(e) Any written comments submitted by employee representatives regarding proposed
21 implementing directives shall become part of the record and shall be forwarded to the agency

1 official issuing such directives for consideration in making a final decision.

2 “(f) Nothing in the continuing collaboration process affects the right of the agency to
3 determine the content of implementing directives and to make them effective at any time.

4 **“§ 5208. Responsibilities of the Director of the Office of Personnel Management and**
5 **agencies**

6 “(a)(1) The Director shall prescribe regulations to carry out the purpose of this chapter,
7 including regulations specifying the roles and responsibilities of agencies covered by the core
8 strategic compensation system established under this chapter, and, except as otherwise provided
9 by law, the purposes for which pay under this chapter is considered basic pay.

10 “(2) Covered agencies may prescribe implementing directives as necessary to apply the
11 provisions of this chapter and the regulations of the Director.

12 “(b) Each agency shall provide the Office with such information as the Director may
13 require regarding its implementation of the core or any alternative compensation system
14 established under this chapter.

15 “(c)(1) The Director shall prescribe rules governing the conversion of positions and
16 employees to the core or any alternative compensation system established under this chapter.
17 For the purpose of this subsection, the term ‘conversion’ refers to the conversion of positions and
18 employees to a compensation system established under this chapter as a result of a coverage
19 determination made under section 5202 and excludes the placement of employees (by
20 reassignment or transfer) to a position already covered by a compensation system established
21 under this chapter.

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1 “(2) Each agency shall convert an employee to a compensation system established under
2 this chapter without a reduction in the employee’s rate of basic pay (taking into account basic
3 pay and any applicable locality payment under section 5304, special rate under section 5305,
4 local market supplement under section 5242, or special market supplement under section 5243).

5 “(3) If another personnel action takes effect on the same day as the effective date of an
6 employee’s conversion to a compensation system established under this chapter, the agency shall
7 process the other action under the rules pertaining to the employee’s former system before
8 processing the conversion action.

9 “(4) An employee on a temporary promotion at the time of conversion shall be returned
10 to his or her official position of record prior to processing the conversion.

11 “(5) The Director may prescribe rules regarding pay adjustments for employees in
12 connection with conversion to a compensation system established under this chapter.

13 “(d)(1) The Director shall certify pay-for-performance systems in accordance with the
14 requirements set forth in section 5257.

15 “(2) If the Director determines that a pay-for-performance system does not meet the
16 certification requirements of section 5257, the Director–

17 (A) shall direct the agency to take appropriate corrective action; and

18 (B) may, if appropriate, rescind any previous certification of such system

19 and direct the agency to implement an appropriate system.

20 An agency shall take any action required by the Director under this paragraph.

1 **“§ 5209. Alternative strategic compensation systems**

2 “(a) An agency may, with the approval of the Director, establish and from time to time
3 adjust one or more alternative strategic compensation systems covering one or more categories
4 of its employees. Such an alternative system (which shall include a pay-for-performance system
5 as defined in section 5205(22)) may vary from the core strategic compensation system
6 established by the Director under this chapter with respect to such matters as the number and
7 composition of career/occupational groups or subgroups and bands, the minimum and maximum
8 rates of pay for rate ranges within a given career/occupational group, the amount of local or
9 special market supplements, and the method or methods of adjusting an employee’s rate of basic
10 pay within a rate range based on his or her performance. Any pay-for-performance system
11 established under this section shall take effect on the date it is certified by the Director as
12 meeting the requirements of section 5257.

13 “(b) Before establishing or adjusting an alternative strategic compensation system under
14 this section, the agency shall publish a notice in the *Federal Register* describing the proposed
15 system and provide for a public comment period of at least 30 days. For a period of at least 30
16 days following publication of such notice, the agency shall meet and confer regarding the
17 proposed system with labor organizations with national consultation rights that represent
18 affected employees. Any written comments provided by such representatives shall be forwarded
19 to the head of the agency (or designee) for consideration in making final agency decisions
20 regarding the alternative system. The agency shall publish a final notice in the *Federal Register*
21 establishing or adjusting the alternative system with an effective date no earlier than 30 days

1 after the date of publication. The process provided under this subsection is not subject to any
2 requirements in chapter 71 and is the exclusive process for the participation of employee
3 representatives in establishing or adjusting an alternative system.

4 “(c) Each agency with an alternative strategic compensation system shall establish a
5 continuing collaboration process as required by section 5207.

6 “(d) To facilitate interagency consultation on any aspect of an alternative strategic
7 compensation system established under this chapter, the Director may establish one or more
8 interagency advisory groups, in addition to the Chief Human Capital Officers Council.

9 “SUBCHAPTER II—CORE POSITION CLASSIFICATION SYSTEM

10 “§ 5211. General provisions

11 “(a) The Director shall establish a core position classification system, which shall be
12 published in such form as the Director may determine. The agencies, on request of the Director,
13 shall furnish information for, and cooperate in, defining components of the classification
14 structure established under section 5212.

15 “(b) The Director, after consulting the agencies to the extent considered necessary, may
16 establish, revise, or abolish official position titles, career/occupational groups and subgroups,
17 and bands.

18 “(c) The Director may make such inquiries or investigations of the duties,
19 responsibilities, and qualification requirements of positions as it considers necessary.

20 “§ 5212. Classification structure

21 “(a) The Director shall apply occupational series established under subchapter II of

chapter 21.

“(b) The Director shall define career/occupational groups and subgroups based on factors such as mission or function; nature of work; qualifications; competencies; career or pay progression patterns; relevant labor-market features; and other characteristics of those occupations or positions.

“(c) For purposes of identifying relative levels of work and corresponding pay ranges, the Office shall establish one or more bands within each career/occupational group or subgroup, where applicable. Each career/occupational group may include, but is not limited to, the following bands:

“(1) Entry/Developmental—work that involves gaining the competencies needed to perform successfully in a Full Performance band through appropriate formal training or on-the-job experience, or both;

“(2) Full Performance—work by employees who have successfully completed any required entry-level training, or developmental activities, or both, necessary to independently perform the full range of non-supervisory duties of a position in a career/occupational group;

“(3) Senior Expert—work that involves an extraordinary level of specialized knowledge or expertise upon which the agency relies for the accomplishment of critical mission goals and objectives; reserved for a limited number of non-supervisory employees; and

1 “(4) Supervisory—work that may involve hiring or selecting employees,
2 assigning work, managing performance, and other associated duties.

3 **“§ 5213. Classifying positions**

4 “Except as otherwise provided by this chapter, each agency shall classify each position
5 under its jurisdiction into its appropriate occupational series, career/occupational group and
6 subgroup, where applicable, and band in conformance with standards published by or
7 coordinated with the Office, or, if no published standards apply directly, consistent with
8 published standards. When facts warrant, an agency may change the classification of a position.
9 Subject to the requirements of this chapter, and except as otherwise provided under section 5214,
10 these actions of an agency are the basis for pay and personnel actions.

11 **“§ 5214. Review of classification of positions**

12 “(a) The Director may review the classification under section 5213 of positions in an
13 agency and direct corrective action with regard to placement of one or more positions in the
14 appropriate pay system, series, career/occupational group, subgroup and band or with regard to
15 the official title of a position. The agency shall take any corrective action directed by the
16 Director.

17 “(b) When the Director finds that positions in an agency were not classified in
18 conformance with, or consistent with, published standards, the Director may—

19 “(1) limit, revoke, or suspend an agency’s authority to classify positions under
20 section 5213; and

21 “(2)(A) require that prior approval of the Director be secured before specified

1 classification actions become effective; or

2 “(B) exercise the authority otherwise exercised by the agency under section 5213.

3 Notwithstanding that section, the exercise of that authority by the Director shall
4 constitute the basis for pay and personnel actions.

5 “(c) After limiting, revoking, or suspending an agency’s authority as provided in
6 subsection (b), the Director may restore the authority to the extent that it is satisfied that
7 subsequent classification actions by the agency will be in conformance with or consistent with
8 published standards.

9 **“§ 5215. Reconsideration of classification decisions**

10 “(a) Subject to regulations prescribed by the Director, an employee may request that the
11 agency or the Director reconsider the pay system, career/occupational group or subgroup,
12 occupational series, official title, or band assigned to the employee’s current official position of
13 record at any time.

14 “(b) An employee may request that the Director review an agency determination made
15 under subsection (a). If an employee does not request a reconsideration decision by the Director,
16 the agency’s classification determination is final and not subject to further review or appeal.

17 “(c) The Director’s final determination on a request made under this section is not subject
18 to further review or appeal.

19 **“SUBCHAPTER III— CORE PAY SYSTEM**

20 **“§ 5221. General provisions**

21 “The Director shall establish a core pay system consistent with this subchapter and

subchapters IV through VIII. The pay structure of the core pay system shall be consistent with the core position classification system established under subchapter II. Performance-based pay under this chapter shall be linked to employees' performance ratings of record under a pay-for-performance system certified by the Director in accordance with section 5257.

“§ 5222. Pay limitations

“(a) No agency may pay a covered employee an annual rate of basic pay in excess of the rate for level III of the Executive Schedule, except as permitted under section 5377.

“(b) Section 5307 (establishing a limit on aggregate compensation) applies to employees covered by this chapter.

“§ 5223. Federal Pay Council

“(a) The Director shall establish a Federal Pay Council of 16 members, of whom—

“(1) 1 shall be an official of the Office who serves as the Chair of the Council;

“(2) 3 shall be chosen from among persons generally recognized for their impartiality, knowledge, and experience in the fields of pay, performance, or labor relations policy;

“(3) 6 shall be representatives of employee organizations which represent substantial numbers of employees holding positions covered by this chapter, and shall be selected giving due consideration to such factors as the relative numbers of employees represented by the various organizations; and

“(4) 6 shall be appointed from among members of the Chief Human Capital Officers Council established under section 1403.

1 “(b) Members of the Federal Pay Council shall not receive pay by reason of their service
2 on the Council. However, members under subsection (a)(2) may be paid expenses in accordance
3 with section 5703.

4 “(c) The Federal Pay Council shall provide the Director and the Director of the Office of
5 Management and Budget with its views and recommendations, if any, regarding—

6 “(1) setting and adjusting the minimum and maximum rates of pay for bands
7 within career/occupational groups or subgroups under the core pay system in accordance
8 with subchapter IV;

9 “(2) the establishment and modification of local market areas established for the
10 core pay system under section 5242; and

11 “(3) the methodology for determining the amounts of local market supplements
12 established for the core pay system under section 5242.

13 “SUBCHAPTER IV—CORE PAY SYSTEM; PAY STRUCTURE

14 “§ 5231. **Rate ranges**

15 “(a) Each band within a career/occupational group or subgroup established under
16 subchapter II shall be associated with a range of rates of basic pay, with each range defined by a
17 minimum rate and a maximum rate. Rates shall be expressed as annual rates. Rate ranges shall
18 be set and adjusted as provided in section 5232.

19 “(b) For each band, the Director shall establish a common rate range that applies in all
20 locations. Supplements established under subchapter V may be paid in addition to basic pay
21 authorized under this subchapter.

1 “(c) The Director may prescribe regulations that establish, or allow an agency to
2 establish, pay progression policies applicable to a particular rate range or portion thereof in order
3 to reflect differences in competencies, performance, organizational level, or other factors among
4 employees in a band.

5 **“§ 5232. Setting and adjusting a rate range**

6 “(a) The Director shall set and adjust rate ranges after consultation with agencies and
7 with the concurrence of the Office of Management and Budget. In setting and adjusting rate
8 ranges for law enforcement positions, as defined in section 5202(c), the Director shall also obtain
9 the concurrence of the Attorney General. The Director shall make a determination on an annual
10 basis with respect to adjusting each rate range. In setting and adjusting rate ranges, the Director
11 may consider mission requirements, labor market conditions, availability of funds, pay
12 adjustments made under other Federal pay systems, and any other relevant factors.

13 “(b) The Director shall determine the effective date of newly established or adjusted rate
14 ranges.

15 “(c) The Director may provide different rate range adjustments for different bands and
16 may adjust the minimum and maximum rates of a band by different percentages.

17 **“§ 5233. Eligibility for pay increase associated with a rate range adjustment**

18 “(a) When a rate range is adjusted under section 5232, employees covered by that range
19 may be eligible for an individual pay increase. An employee whose rating of record for the most
20 recently completed appraisal period is fully successful or higher shall receive an increase in
21 basic pay equal to the percentage value of any increase in the minimum rate of the employee’s

1 range resulting from a rate range adjustment under section 5232, except that such increase may
2 not cause an employee's rate of basic pay to exceed the maximum of the range. The pay
3 increase takes effect at the same time as the corresponding rate range adjustment, except as
4 provided in section 5234. For an employee receiving a retained rate, the amount of the increase
5 under this subsection is determined under section 5266.

6 “(b) If an employee does not have a rating of record for the most recently completed
7 appraisal period, he or she shall be treated in the same manner as an employee with a rating of
8 record of fully successful or higher and is entitled to receive an increase based on the rate range
9 adjustment, as provided in subsection (a).

10 “(c) An employee whose rating of record is below fully successful is prohibited from
11 receiving a pay increase as a result of a rate range adjustment, except as provided by
12 sections 5234 and 5235. Failure to receive a pay increase is not an adverse action under chapter
13 75.

14 **“§ 5234. Treatment of an employee with a rating of record below fully successful**

15 “(a) An employee with a rating of record below fully successful who does not receive a
16 pay increase under section 5233 and whose rate of basic pay does not fall below the minimum
17 rate of his or her band as a result of that rating shall receive such an increase if he or she receives
18 a new rating of record of fully successful or higher. Such an increase shall be made effective on
19 the first day of the first pay period beginning on or after the date the new rating of record is final.

20 “(b) In the case of an employee with a rating of record below fully successful who does
21 not receive a pay increase under section 5233 and whose rate of basic pay falls below the

1 minimum rate of his or her band as a result of that rating, an agency shall–

2 “(1) if the employee demonstrates performance that meets or exceeds
3 performance expectations within 90 days after the effective date of the rate range
4 adjustment, issue a new rating of record and adjust the employee’s pay prospectively
5 (consistent with the amount provided to employees with a fully successful or higher
6 rating under section 5233(a)) by making the increase effective on the first day of the first
7 pay period beginning on or after the date the new rating of record is final; or

8 “(2) initiate action within 90 days after the effective date of the rate range
9 adjustment to demote or remove the employee in accordance with the adverse action
10 procedures established in chapter 75.

11 “(c) If an agency fails to initiate a removal or demotion action under subsection (b)(2)
12 within 90 days after the date of a rate range adjustment, the employee becomes entitled to the
13 minimum rate of his or her band rate range on the first day of the first pay period beginning on or
14 after the 90th day following the date of the rate range adjustment.

15 “SUBCHAPTER V—CORE PAY SYSTEM; LOCAL AND
16 SPECIAL MARKET SUPPLEMENTS

17 “§ 5241. General provisions

18 “The basic pay ranges established under subchapter IV may be supplemented in
19 appropriate circumstances by local or special market supplements, as described in this
20 subchapter. These supplements are expressed as a percentage of basic pay and are set and
21 adjusted as described in section 5244. As authorized by section 5266, the Director shall

1 prescribe in regulations the extent to which this subchapter applies to employees receiving a
2 retained rate.

3 **“§ 5242. Local market supplements**

4 “(a) For each rate range, the Director may establish local market supplements that apply
5 in specified local labor market areas, subject to the requirements in section 5244. Local market
6 supplements apply to employees whose official duty station is located in that area. The Director
7 may provide different local market supplements for different career/occupational groups or for
8 different bands within the same career/occupational group in the same local market area.

9 “(b) The Director shall establish and modify local market area boundaries by regulation.
10 Judicial review of any such regulation shall be limited to whether or not it was promulgated in
11 accordance with the notice and comment requirements of section 553.

12 “(c) Local market supplements are considered basic pay for only the following purposes:

13 “(1) retirement under chapter 83 or 84;

14 “(2) life insurance under chapter 87;

15 “(3) premium pay under subchapter V of chapter 55 or similar payments under
16 other legal authority;

17 “(4) severance pay under section 5595;

18 “(5) application of the maximum basic pay rate limitations set forth in sections
19 5209 and 5222;

20 “(6) determining the rate of basic pay upon conversion to an agency pay system
21 established under this chapter, consistent with section 5208(c);

1 “(7) other payments and adjustments as specified by regulations of the Director;

2 “(8) other payments and adjustments under other statutory or regulatory authority

3 for which locality-based comparability payments under section 5304 are considered part
4 of basic pay; and

5 “(9) any provisions for which local market supplements are required by law to be
6 considered part of basic pay.

7 **“§ 5243. Special market supplements**

8 “The Director may, subject to the requirements in section 5244, establish special market
9 supplements to address specific conditions that affect a particular labor market and that provide
10 higher pay levels for categories of employees within a career/occupational group or subgroup if
11 the Director determines that such supplements are warranted by current or anticipated
12 recruitment needs, retention needs, or both. A special market supplement replaces any lower
13 local market supplement that would otherwise be applicable. Any special market supplement
14 shall be treated as basic pay for the same purposes as local market supplements, as described in
15 section 5242(c), for the purpose of computing cost-of-living allowances and post differentials in
16 nonforeign areas under section 5941 and for any additional purposes that the Director may, by
17 regulation, prescribe.

18 **“§ 5244. Setting and adjusting local and special market supplements**

19 “(a) The Director may, after consultation with affected agencies, set and adjust local and
20 special market supplements. In setting and adjusting local market supplements, the Director
21 shall obtain the concurrence of the Office of Management and Budget. In setting and adjusting

1 local market supplements for law enforcement positions, as defined in section 5202(c), the
2 Director also shall obtain the concurrence of the Attorney General. In determining the amounts
3 of the supplements, the Director may consider mission requirements, labor market conditions,
4 availability of funds, pay adjustments received by employees of other Federal agencies, and any
5 other relevant factors. The Director shall take into account the receipt by employees of
6 allowances and differentials under chapter 59 in evaluating labor market conditions.

7 “(b) The Director shall determine the effective date of newly set or adjusted local and
8 special market supplements.

9 **“§ 5245. Eligibility for pay increase associated with a supplement adjustment**

10 “(a) When a local or special market supplement is adjusted under section 5244, an
11 employee to whom the supplement applies is entitled to the pay increase resulting from that
12 adjustment if the employee’s rating of record for the most recently completed appraisal period is
13 fully successful or higher. This includes an increase resulting from the initial establishment and
14 setting of a special market supplement. The pay increase takes effect at the same time as the
15 applicable supplement is set or adjusted, except as provided in section 5246.

16 “(b) If an employee does not have a rating of record for the most recently completed
17 appraisal period, he or she shall be treated in the same manner as an employee with a rating of
18 record of fully successful or higher and is entitled to any pay increase associated with a
19 supplement adjustment, as provided in subsection (a).

20 “(c) An employee who has a rating of record below fully successful is prohibited from
21 receiving a pay increase as a result of an increase in an applicable local or special market

1 supplement, except as provided by section 5246. Failure to receive a pay increase is not an
2 adverse action under chapter 75.

3 **“§ 5246. Treatment of an employee with a rating of record below fully successful**

4 “(a) An employee who does not receive a pay increase under section 5245 and whose rate
5 of basic pay (including a local or special market supplement) does not fall below the minimum
6 adjusted rate of his or her band as a result of that rating shall receive such an increase if he or she
7 receives a rating of record of fully successful or higher. Such an increase shall be made effective
8 on the first day of the first pay period beginning on or after the date the new rating of record is
9 final.

10 “(b) In the case of an employee who does not receive a pay increase under section 5245
11 and whose rate of basic pay (including a local or special market supplement) falls below the
12 minimum adjusted rate of his or her band as a result of that rating, an agency shall–

13 “(1) if the employee demonstrates performance that meets or exceeds
14 performance expectations within 90 days after the effective date of the local or special
15 market supplement adjustment, issue a new rating of record and adjust the employee’s
16 pay prospectively by making the increase effective on the first day of the first pay period
17 beginning on or after the date the new rating of record is final; or

18 “(2) initiate action within 90 days after the effective date of the local or special
19 market supplement adjustment to demote or remove the employee in accordance with the
20 adverse action procedures established in chapter 75.

21 “(c) If an agency fails to initiate a removal or demotion action under subsection (b)(2)

1 within 90 days after the date of a local or special market supplement adjustment, the employee
2 becomes entitled to the minimum adjusted rate of his or her band rate range on the first day of
3 the first pay period beginning on or after the 90th day following the date of the local or special
4 market supplement adjustment.

5 “SUBCHAPTER VI—CORE PAY SYSTEM; PERFORMANCE-BASED PAY

6 “§ 5251. Purpose

7 “This subchapter authorizes the establishment of a pay-for-performance system
8 consisting of various types of performance-based pay adjustments and cash awards that are part
9 of the core pay system established under this chapter.

10 “§ 5252. Performance pay increases

11 “(a)(1) An employee in a Full Performance or higher band shall be eligible for an annual
12 performance pay increase based on his or her rating of record, as provided under a pay-for-
13 performance system certified under section 5257, subject to the conditions set forth in this
14 section.

15 “(2) The pay system shall allocate performance pay increases based on performance
16 shares that are directly linked to the employee’s rating of record, as described in this section.

17 “(3) The rating of record used as the basis for a performance pay increase is the one
18 assigned for the most recently completed appraisal period (subject to the requirements of chapter
19 43), except that, if the supervisor or other rating official determines that an employee’s current
20 performance is inconsistent with that rating, the supervisor or other rating official may prepare a
21 more current rating of record.

1 “(4) If an employee is eligible to receive a rating of record but no rating has been
2 assigned, the agency shall use the modal rating received by other employees covered by the same
3 pay pool for the most recently completed appraisal period for the purpose of determining the
4 employee’s performance pay increase.

5 “(5) For employees who are not eligible for a rating of record for reasons other than those
6 identified in section 5267(f) or (g), each agency shall establish policies for determining a pay
7 increase under this section.

8 “(b)(1) An agency shall establish pay pools for allocating performance pay increases.

9 “(2) Each pay pool shall cover a defined group of employees, as determined by the
10 agency.

11 “(3)(A) For 5 years after conversion to a pay-for-performance system established under
12 this chapter, agencies shall allocate annually an amount for performance pay increases equal to
13 or greater than the Governmentwide historical average aggregate funds expended for periodic
14 step increases and additional step increases granted under sections 5335 and 5336 , as well as the
15 estimated average amount that otherwise would have been spent on promotions among positions
16 placed in the same band, as determined by the Director.

17 “(B) Beginning on the expiration of the 5-year period referred to in subparagraph (A), an
18 agency head shall determine on an annual basis the amount of funds to be allocated to
19 performance pay increases, subject to any minimum amount prescribed by the Director.

20 “(4) Subject to regulations prescribed by the Director, an agency may determine the
21 distribution of funds allocated for performance pay increases among pay pools and may adjust

1 those amounts based on overall levels of organizational performance or contribution to the
2 agency's mission.

3 “(c)(1) For each group of employees covered by a single pay pool, an agency shall
4 establish numbers of shares that correspond to the summary rating levels assigned under the
5 applicable performance appraisal system established under chapter 43, so that a single number of
6 shares or a range of shares is associated with each rating level, such that a higher performance
7 rating receives a greater number of shares. The number of performance shares shall determine
8 performance pay increases. The number of shares associated with a performance rating may
9 differ by pay pool.

10 “(2) The agency shall assign zero performance shares to any rating of record below fully
11 successful.

12 “(3) If the agency assigns a range of performance shares to a rating level, the agency
13 shall identify in implementing directives the criteria to be used in assigning employees a specific
14 number of shares within that range.

15 “(4) Notwithstanding paragraph (1), an agency may, for any pay pool, adopt a method of
16 adjusting shares based on an employee's position in the rate range.

17 “(d)(1) Based on the predetermined dollar value of the pay pool and the distribution of
18 performance shares among pay pool employees, the agency shall determine the value of a
19 performance share, expressed as a percentage of an employee's rate of basic pay (exclusive of
20 local or special market supplements under sections 5242 and 5243) or as a fixed dollar amount.

21 “(2) To determine an individual employee's performance pay increase, the agency shall

1 multiply the share value determined under paragraph (1) by the number of performance shares
2 assigned to the employee based on the applicable rating of record.

3 “(3) To the extent that the value of the performance pay increase determined under
4 paragraph (2) does not cause the employee’s rate of basic pay to exceed the maximum rate of the
5 employee’s band rate range (or any limitation established under section 5231(c)), the agency
6 shall adjust the employee’s annual rate of basic pay by the amount of that performance pay
7 increase. At the agency’s discretion, to the extent that a performance pay increase would cause
8 the employee’s rate of basic pay to exceed that maximum rate (or limitation established under
9 section 5231(c)), that difference may be granted as a lump-sum payment. Such a lump-sum
10 payment shall not be funded out of the pay pool.

11 “(4) The agency may, after coordination with the Office, determine the effective date of
12 performance pay increases made under paragraph (3).

13 “(5) An employee receiving a retained rate under section 5266 may not receive a lump-
14 sum performance payment that exceeds the amount that may be received by an employee
15 covered by the same pay pool with the same number of performance shares whose rate of pay is
16 at the maximum rate of the same band.

17 “(e) The agency shall issue implementing directives regarding the proration of
18 performance pay increases for employees who, during the period between the effective dates of
19 performance pay increases, are—

20 “(1) hired or promoted;

21 “(2) in a leave-without-pay status (except as provided in section 5267(f) and (g));

1 or

2 “(3) in other circumstances where proration is considered appropriate.

3 “(f) For employees covered by subsection (f) or (g) of section 5267, the agency shall
4 determine performance pay increases consistent with the requirements in those subsections.

5 “(g) Notwithstanding any other provision of this section, an agency may, subject to
6 coordination with the Office, establish an alternative method for awarding performance pay
7 increases that provides, at a minimum, the following elements:

8 “(1) the use of at least one summary rating level of performance above fully
9 successful (except for employees in an Entry/Developmental band) and a method of
10 providing higher basic pay increases for higher summary rating levels of performance
11 above fully successful;

12 “(2) a bar on providing a performance pay increase to the extent it would cause
13 the employee’s rate of basic pay to exceed the maximum rate of the employee’s band (or
14 any applicable limitation established under section 5231(c));

15 “(3) the requirement that only an employee with a rating of record of fully
16 successful or higher may receive a performance pay increase;

17 “(4) the requirement that an employee receiving a retained rate under section
18 5266 may not receive a performance pay increase;

19 “(5) a method for managing costs of performance pay increases within a
20 predetermined salary budget or salary increase allocation fund; and

21 “(6) adherence to section 5267(f) and (g) when applicable.

1 **“§ 5253. Within-band reductions**

2 “Subject to any applicable adverse action procedures set forth in chapter 75, an agency
3 may reduce an employee’s rate of basic pay within a band for unacceptable performance or
4 conduct. Such a reduction may not be more than 10 percent or cause an employee’s rate of basic
5 pay to fall below the minimum rate of the employee’s band rate range. Such a reduction may be
6 made effective at any time.

7 **“§ 5254. Special within-band increases**

8 “An agency may issue implementing directives regarding special within-band basic pay
9 increases for employees within a Full Performance or higher band established under section
10 5212 who possess exceptional skills in critical areas or who make exceptional contributions to
11 mission accomplishment or in other circumstances determined by the agency. Increases under
12 this section are in addition to any performance pay increases made under section 5252 and may
13 be made effective or revoked at any time or when the conditions of this section are no longer
14 met. Special within-band increases may not be based on length of service. Revocation of a
15 special within-band increase is not an adverse action under chapter 75 and shall not entitle the
16 employee to pay retention under section 5266.

17 **“§ 5255. Developmental pay adjustments**

18 “Each agency may issue implementing directives regarding pay progression within the
19 Entry/Developmental band that are linked to the acquisition and demonstration of competencies
20 and to other relevant factors, subject to regulations issued by the Director.

21 **“§ 5256. Performance-based cash awards**

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1 “(a)(1) An employee may be paid a cash award under this section on the basis of his or
2 her most recent rating of record and any other performance assessment or criteria the agency
3 determines appropriate.

4 “(2) A group of employees may be paid an award under this section based on such
5 performance assessments or criteria as the agency determines appropriate.

6 “(b) An award under this section shall be paid as a lump sum and shall be considered to
7 be part of the basic pay of the employee only for such purposes as the Director determines
8 appropriate.

9 “(c) An employee may not receive a payment under this section and—

10 “(1) a payment of an award under section 4503 as an individual or a member of a
11 group; or

12 “(2) a performance-based cash award under section 4505a—
13 based on the same rating of record or assessment.

14 “(d) Awards under this section shall not be paid from funds allocated for performance
15 pay increases under section 5252 and shall not exceed 20 percent of an employee’s annual rate of
16 basic pay, including any local or special market supplement, unless approved by the agency
17 head.

18 **“§ 5257. Certification of pay-for-performance systems**

19 “(a) Consistent with section 5202, an agency may implement a pay-for-performance
20 system established under subchapter VI or section 5209 for a category of employees only after
21 the Office has certified that the pay-for-performance system that will cover those employees

1 incorporates the following characteristics:

2 “(1) adherence to merit system principles set forth in section 2301;

3 “(2) a fair, credible, and transparent employee performance appraisal system;

4 “(3) a link between elements of the pay-for-performance system, the employee
5 performance appraisal system, and the agency’s strategic plan;

6 “(4) a means for ensuring employee involvement in the design and
7 implementation of the pay-for-performance system;

8 “(5) adequate training and retraining for supervisors, managers, and employees in
9 the implementation and operation of the pay-for-performance system;

10 “(6) a process for ensuring periodic performance feedback and dialogue between
11 supervisors, managers, and employees throughout the appraisal period, and setting
12 timetables for review;

13 “(7) effective safeguards to ensure that the management of the pay-for-
14 performance system is fair and equitable and based on employee performance; and

15 “(8) a means for ensuring that adequate agency resources are allocated for the
16 design, implementation, and administration of the pay-for-performance system.

17 “(b)(1) To obtain certification of a pay-for-performance system established under this
18 subchapter and implement such pay-for-performance system, an agency shall–

19 “(A) publish a notice in the *Federal Register* describing the proposed system and
20 provide for a public comment period of at least 30 days;

21 “(B) meet and confer regarding the proposed system with representatives of labor

1 organizations with national consultation rights representing affected employees for a
 2 period of at least 30 days following publication of such notice;

3 “(C) consider any written comments provided by such representatives to the head
 4 of the agency (or designee) in making final agency decisions regarding the pay-for-
 5 performance system prior to requesting certification by the Director;

6 “(D) submit the final proposed system to the Office for certification; and

7 “(E) publish, after receipt of certification, a final notice in the *Federal Register*
 8 establishing or amending the pay-for-performance system with an effective date no
 9 earlier than 30 days after the date of publication.

10 “(2) Any proposal for a substantive modification of a certified pay-for-performance
 11 system shall be subject to the procedures established in paragraph (1).

12 “(3) The process provided under this subsection is the exclusive process for the
 13 participation of employee representatives in establishing or amending a pay-for-performance
 14 system established under this subchapter.

15 “SUBCHAPTER VII—CORE PAY SYSTEM; PAY ADMINISTRATION

16 “§ 5261. **Setting an employee’s starting pay**

17 “Each agency shall, after coordination with the Office, issue implementing directives
 18 regarding the starting rate of pay for an employee, including—

19 “(1) an individual who is newly appointed or reappointed to the Federal service;

20 “(2) an employee transferring to the agency from another agency; and

21 “(3) an agency employee who moves from a noncovered position to a position

1 already covered by this chapter.

2 **“§ 5262. Use of highest previous rate**

3 “Subject to regulations prescribed by the Director, each agency may issue implementing
4 directives regarding the discretionary use of an individual’s highest previous rate of basic pay
5 received as a Federal employee in setting pay upon reemployment, transfer, reassignment,
6 promotion, demotion, placement in a different career/occupational group, or change in type of
7 appointment.

8 **“§ 5263. Setting pay upon promotion**

9 “Upon an employee’s promotion, an agency shall provide an increase in the employee’s
10 rate of basic pay to the extent required in regulations prescribed by the Director. The rate of
11 basic pay after promotion may not be less than the minimum rate of the higher band.

12 **“§ 5264. Setting pay upon demotion**

13 “Subject to regulations prescribed by the Director, each agency may issue implementing
14 directives regarding how to set an employee’s pay when he or she is demoted. The directives
15 shall distinguish between demotions under adverse action procedures, as defined in chapter 75,
16 and other reductions in band or pay. A reduction in basic pay upon demotion under adverse
17 action procedures may not exceed 10 percent unless a larger reduction is needed to place the
18 employee at the maximum rate of the lower band.

19 **“§ 5265. Setting pay upon movement to a different career/occupational group or subgroup**

20 “Subject to regulations prescribed by the Director, each agency may issue implementing
21 directives regarding how to set an employee’s pay when he or she moves voluntarily or

1 involuntarily to a position in a different career/occupational group or subgroup, including rules
2 for determining whether such a movement is to a higher or lower band for the purpose of setting
3 pay upon promotion or demotion under sections 5263 and 5264, respectively.

4 **“§ 5266. Pay retention**

5 “(a) Subject to the requirements of this section, the Director shall prescribe regulations
6 regarding pay retention for employees whose rate of basic pay would otherwise be reduced. The
7 regulations shall address both eligibility for pay retention and the method of applying pay
8 retention to eligible employees.

9 “(b) For an employee who is entitled to a retained rate that exceeds the maximum rate of
10 the employee’s band, the retained rate shall be increased by one-half of the percentage value of
11 any increase in the minimum rate of the employee’s band for which the employee would
12 otherwise be eligible under section 5233.

13 **“§ 5267. Miscellaneous**

14 “(a) Except in the case of an employee who does not receive a pay increase under section
15 5233 or 5245 because of a rating of record below fully successful, an employee’s rate of basic
16 pay may not be less than the minimum rate of the employee’s band, including any applicable
17 local or special market supplement.

18 “(b) Except as provided in section 5266, an employee’s rate of basic pay may not exceed
19 the maximum rate of the employee’s rate range.

20 “(c) Each agency shall follow the rules for establishing pay periods and computing rates
21 of pay in sections 5504 and 5505, as applicable. For employees covered by section 5504, annual

1 rates of pay shall be converted to hourly rates of pay in computing payments received by covered
2 employees.

3 “(d) Subject to regulations prescribed by the Director, each agency may issue
4 implementing directives regarding the movement of employees to or from a band with a rate
5 range that is increased by a special market supplement.

6 “(e) For the purpose of applying the reduction-in-force provisions, the Director shall
7 establish representative rates for all rate ranges.

8 “(f) Subject to regulations prescribed by the Director, each agency may issue
9 implementing directives regarding how it sets the rate of basic pay prospectively for an
10 employee who leaves an agency position to perform service in the uniformed services (in
11 accordance with section 4303 of title 38, United States Code, and related regulations prescribed
12 by the Director) and returns through the exercise of a reemployment right provided by law,
13 Executive order, or regulation under which accrual of service for seniority-related benefits is
14 protected, such as section 4316 of title 38, United States Code. The agency shall credit the
15 employee with intervening rate range adjustments under section 5233(a), as well as
16 developmental pay adjustments under section 5255 (as determined by the agency in accordance
17 with its implementing directives), and performance pay increases under section 5252 based on
18 the employee’s last rating of record. For employees who have no such rating of record, the
19 agency shall use the modal rating received by other employees covered by the applicable pay
20 pool for the most recently completed appraisal period. An employee returning from qualifying
21 service in the uniformed services shall receive the full amount of the performance pay increase

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1 associated with his or her rating of record.

2 “(g) Subject to regulations prescribed by the Director, each agency may issue
3 implementing directives regarding how it sets the rate of basic pay prospectively for an
4 employee who returns to duty after a period of receiving injury compensation under subchapter I
5 of chapter 81 (in a leave-without-pay status or as a separated employee). The agency shall credit
6 the employee with intervening rate range adjustments under section 5233(a), as well as
7 developmental pay adjustments under section 5255 (as determined by the agency in accordance
8 with its implementing directives), and performance pay increases under section 5252 based on
9 the employee’s last rating of record. For employees who have no such rating of record, the
10 agency shall use the modal rating received by other employees covered by the same pay pool
11 during the most recently completed appraisal period. An employee returning to duty after
12 receiving injury compensation payments shall receive the full amount of the performance pay
13 increase associated with his or her rating of record.

14 “SUBCHAPTER VIII—CORE PAY SYSTEM; SPECIAL PAYMENTS

15 “§ 5271. Special payments

16 “(a) An agency may authorize additional payments for—

17 “(1) a specialization for which the incumbent employee is trained and ready to
18 perform at all times;

19 “(2) an employee serving on a special assignment in a position placing
20 significantly greater demands on the employee than other assignments within the
21 employee’s band; and

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1 “(3) an employee serving in a position for which the agency is experiencing or
2 anticipates significant recruitment or retention problems.

3 “(b) An agency may determine the amount of the payments and the conditions for
4 eligibility, including any performance or service agreement requirements. Payments may be
5 made at the same time as basic pay or in periodic lump-sum payments. Special payments are not
6 basic pay for any purpose.”.

7 **SEC. 203. ADDITIONAL COMPENSATION AMENDMENTS.**

8 Title 5, United States Code, is amended—

9 (1) in chapter 53—

10 (A) in section 5304—

11 (i) in subsection (g)(2)—

12 (I) in subparagraph (A) by striking “subparagraphs (A)-
13 (D)” and inserting “subparagraphs (A)-(C)”; and

14 (II) in subparagraph (B) by striking “subsection (h)(1)(D)”
15 and inserting “subsection (h)(1)(C)”; and

16 (ii) in subsection (h)—

17 (I) in paragraph (1)—

18 (aa) by striking subparagraph (A);

19 (bb) by redesignating subparagraphs (B), (C), and

20 (D) as subparagraphs (A), (B), and (C), respectively;

21 (cc) in clause (v) by striking “or” at the end;

(dd) in clause (vi) by striking the period at the end
and inserting “; or;” and

(ee) by adding at the end the following new clause:

“(vii) a position to which section 5376 applies (relating to certain
senior-level and scientific and professional positions).”;

(II) in paragraph (2)–

(aa) in subparagraph (B)(i)–

(AA) by striking “subparagraphs (A)
through (C)” and inserting “subparagraphs (A) and
(B)”; and

(BB) by striking “or (vii)” and inserting
“(vi), or (vii)”;

(bb) in subparagraph (B)(ii)–

(AA) by striking “paragraph (1)(D)” and
inserting “paragraph (1)(C)”; and

(BB) by striking “or (vi)” and inserting
“(vi), or (vii)”;

(cc) in subparagraph (C) by striking the second
sentence; and

(III) in paragraph (3)(B) by striking “shall remain in effect
through the last day of the last applicable pay period commencing

during that calendar year" and inserting "shall remain in effect
until terminated by the President or the President's designee";

(B) in section 5307–

(i) in subsection (a)(2)–

(I) in subparagraph (A) by striking "or section 5596";

(II) by redesignating subparagraphs (B) and (C) as
subparagraphs (C) and (D); and

(III) by inserting after subparagraph (A) the following new
subparagraph:

“(B) section 5596 to the extent that such payment is associated with an
erroneous withdrawal or reduction in a previous calendar year;”; and

(ii) in subsection (d)–

(I) in paragraph (2) by striking all after “involved,” and
inserting:

“has a performance appraisal system certified under this subsection
as making meaningful distinctions (as designed and applied) based
on relative performance.”; and

(II) in paragraph (3)(B) by striking all through “2 calendar
years” and inserting:

“The certification of an agency performance appraisal system
under this subsection shall be for a period of 24 months beginning

on the date of certification, unless extended by the Office of
Personnel Management for up to 6 additional months”;

(C) in section 5334 by adding at the end the following new subsection:

“(h) Notwithstanding subsection (b), when an employee is reassigned or transfers from a civil service position not covered by this subchapter to a position covered by this subchapter, the gaining agency, at its discretion, may set the employee’s initial rate of basic pay at the lowest rate in the rate range applicable to the new position which exceeds the employee’s existing rate of basic pay by 6 percent, not to exceed the maximum rate of the rate range for the new position.

This subsection may be applied only when—

“(1) the gaining agency determines that the new position represents a higher-level position such that the movement is reasonably considered to be the equivalent of a promotion; and

“(2) the maximum rate of the rate range for the new position exceeds the maximum rate of the rate range for the position held immediately before the reassignment or transfer by at least 6 percent.”;

(D) in section 5376—

(i) in the catchline by inserting “**scientific and professional** after
“**senior-level**”;

(ii) by amending subsection (a)(1)-(2) and the undesignated
material after the last paragraph of such subsection to read as follows:

“(a) This section applies to senior-level and scientific and professional positions

1 established under section 3104 consistent with standards prescribed under that section, but does
2 not apply to—”;

3 (iii) by redesignating subparagraphs (A) and (B) of that subsection
4 as paragraphs (1) and (2), respectively; and

5 (iv) in subsection (b)—

6 (I) in paragraph (1)—

7 (aa) by amending subparagraph (A) to read as
8 follows:

9 “(A) no less than the rate that is 85 percent of the rate for level V of the
10 Executive Schedule (rounded to the nearest hundred); and”; and

11 (bb) in subparagraph (B) by striking “level IV” and
12 inserting “level III”; and

13 (II) by inserting at the end the following new paragraph:

14 “(3) Notwithstanding the provisions of paragraph (1), the applicable maximum
15 shall be level II of the Executive Schedule for any agency that, under section 5307, has a
16 performance appraisal system certified as making meaningful distinctions (as designed
17 and applied) based on relative performance.”;

18 (E) in section 5379—

19 (i) by amending subsection (a)(2) to read as follows:

20 “(2) An employee shall be ineligible for benefits under this section if the
21 employee—

1 “(A) occupies a position that is excepted from the competitive service
2 because of its confidential, policy-determining, policy-making, or policy-
3 advocating character;

4 “(B) is a non-career appointee in the Senior Executive Service as defined
5 in section 3132(a)(7); or

6 “(C) is appointed by the President and is not otherwise excluded by
7 subparagraph (A) or (B).”;

8 (ii) by amending subsection (b)(2) to read as follows:

9 “(2) Payments made under this section shall be made subject to such terms,
10 limitations, or conditions as may be mutually agreed to by the agency and employee
11 concerned, subject to the limitations established by the Director of the Office of
12 Personnel Management in regulations.”;

13 (iii) by amending subsection (c) to read as follows:

14 “(c) An employee selected to receive benefits under this section shall sign a service
15 agreement before receiving any such benefits. The service agreement shall be consistent with
16 regulations prescribed by the Director. The service agreement shall address—

17 “(1) the required period of service;

18 “(2) the benefits to be provided by the agency (including provisions for adjusting
19 the amount of benefits);

20 “(3) the conditions that shall be met by the employee to maintain eligibility for
21 benefits;

1 “(4) the requirement to reimburse the agency for loan repayment benefits under
2 specified conditions; and

3 “(5) the conditions under which reimbursement will not be required.”; and

4 (iv) by striking subsections (d) through (h) and inserting new
5 subsections (d) and (e) as follows:

6 “(d) Any benefit under this section shall not be considered basic pay for any purpose.

7 “(e) The Director shall prescribe such regulations as it determines to be necessary to
8 implement this section. The Director may require agencies to provide information regarding the
9 payment of benefits under this section.”; and

10 (F) in section 5382(b) by striking “the minimum rate of basic pay payable
11 under section 5376” and inserting “the rate that is 85 percent of the rate for level
12 V of the Executive Schedule (rounded to the nearest hundred)”;

13 (2) by repealing chapter 54;

14 (3) in chapter 55—

15 (A) by amending section 5541(2)(iii) to read as follows:

16 “(iii) an employee whose pay is fixed by law at a rate applicable to
17 the Executive Schedule under subchapter II of chapter 53;”;

18 (B) in section 5548 by adding at the end the following new subsection:

19 “(c) Notwithstanding any other provision of this subchapter or of section 4109, 6123, or
20 6128, the Director may prescribe regulations that establish alternative premium pay provisions in
21 lieu of the provisions that would otherwise be applicable to employees covered by this

1 subchapter. The Director shall identify in such regulations the categories of employees who are
 2 covered by each alternative premium pay provision and shall prescribe the extent to which each
 3 alternative premium payment is or is not considered basic pay for specified purposes, such as
 4 retirement. Notwithstanding any other provision of law, the Director may apply this subchapter,
 5 including any applicable alternative provisions established under this subsection, in lieu of
 6 otherwise applicable statutory provisions, to employees in law enforcement positions as defined
 7 in section 5202(c)(2).”; and

8 (C) in section 5595–

9 (i) in subsection (a)(2)–

10 (I) by amending clause (i) to read as follows:

11 “(i) an employee whose pay is fixed by law at a rate applicable to
 12 the Executive Schedule under subchapter II of chapter 53 or whose rate of
 13 basic pay exceeds the rate for level II of the Executive Schedule;”; and

14 (II) in clause (ii) by striking the comma and all that follows
 15 and inserting a semicolon;

16 (ii) in subsection (b) by striking “However, the” and inserting
 17 “Any involuntary movement from an appointment without time limitation
 18 to a time-limited appointment without a break in service is an involuntary
 19 separation for purposes of this subsection. The”; and

20 (iii) in subsection (d)–

21 (I) by striking “(d)” and inserting “(d)(1)”; and

(II) by adding at the end the following new paragraphs:

“(2) If the reemployment referred to in paragraph (1) is under a time-limited appointment, payments discontinued under paragraph (1) shall be resumed when the time-limited appointment expires, unless the individual is reemployed by the Government.

“(3) No severance pay is payable for a period between separation from service and the discontinuation of payments under paragraph (1) if that period is 3 days or less.”;

(4) in section 8351 by adding at the end a new subsection (f) to read as follows:

“(f) An employee making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) all or any part of an award, bonus pay, or lump-sum payment under section 5252 received by the employee.”; and

(5) in section 8432 by adding at the end a new subsection (l) to read as follows:

“(l)(1) An employee making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) all or any part of an award, bonus pay, or lump-sum payment under section 5252 received by the employee.”.

TITLE III—STAFFING MODERNIZATION

SEC. 301. AUTHORITY FOR EMPLOYMENT.

Chapter 31 of title 5, United States Code, is amended—

(1) by amending section 3101 to read as follows:

“§ 3101. General authority to employ; types of appointments

“(a) The head of each Executive agency and military department may appoint such

employees as may be necessary in accordance with the provisions of this title. Career and time-limited appointments in the competitive service shall be filled in accordance with regulations prescribed under sections 3303 and 3303a unless specifically excepted by statute or Executive order. Career and time-limited appointments in the excepted service shall be filled in accordance with regulations prescribed under section 3313.

“(b) For the purpose of this chapter–

“(1) ‘career appointment’ means an appointment without time limitation, in either the competitive service or the excepted service, to perform work that is expected to continue; and

“(2) ‘time-limited appointment’ means an appointment of limited duration, either specified or unspecified, in either the competitive or excepted service.

“(c) The Director of the Office of Personnel Management shall prescribe regulations under which an employee on a time-limited appointment may be selected for a career appointment without further competition and such other regulations as may be necessary for the administration of this section.”;

(2) in section 3104–

(A) in the catchline by inserting at the end “**and senior-level personnel**”;

(B) in subsection (a) by amending the first sentence to read as follows:

“The Director of the Office of Personnel Management may establish, and from time to time revise–

“(1) standards and procedures, which shall be published in such form as the

1 Office may determine, under which positions may be classified as senior-level positions
2 or as requiring specially qualified scientific and professional personnel; and

3 “(2) the maximum number of positions for carrying out research and development
4 and other senior-level functions which require the services of specially qualified
5 personnel.”; and

6 (C) in subsection (c)–

7 (i) by inserting “other senior-level” after “professional”; and

8 (ii) by inserting “or other” after “development” each place it

9 appears;

10 (3) by repealing section 3108;

11 (4) in section 3109(b)–

12 (A) by striking “procure by contract the temporary (not in excess of 1
13 year) or intermittent services of experts or consultants or an organization thereof,
14 including stenographic reporting services” and inserting “appoint experts and
15 consultants as Federal employees to perform time-limited service, in accordance
16 with regulations prescribed by the Director of the Office of Personnel
17 Management under subsection (d)”;

18 (B) in paragraph (2) by inserting “, chapter 52,” after “chapter 51”; and

19 (C) by striking the third sentence and inserting the following:

20 “Experts and consultants may be paid on an hourly or daily basis. Notwithstanding any other
21 provision of this section, an agency may not pay compensation for service under this section in

1 excess of the hourly or daily equivalent, as applicable, of the rate for level III of the Executive
 2 Schedule, unless specifically authorized by the appropriation or other statute authorizing the
 3 service. Compensation for experts and consultants under this section shall be subject to
 4 regulations prescribed by the Director of the Office of Personnel Management under subsection
 5 (d).”;

6 (5) by repealing section 3112;

7 (6) in section 3133 by adding at the end the following new subsections:

8 “(f) The Director of the Office of Personnel Management may establish standards and
 9 procedures (including requiring agencies, where necessary in the judgment of the Director, to
 10 obtain the prior approval of the Director) in accordance with which positions may be classified
 11 to the Senior Executive Service.

12 “(g) In the case of positions proposed to be placed in the Federal Bureau of Investigation
 13 and Drug Enforcement Administration Senior Executive Service, the President, rather than the
 14 Director, shall—

15 “(1) exercise the authority under subsection (f); and

16 “(2) establish, and from time to time revise, the maximum number of positions
 17 which may at any one time be classified to the Senior Executive Service.”;

18 (7) in section 3151(a)(4) by striking “subchapter II”

19 and inserting “subchapter III”; and

20 (8) in the table of sections by amending the items relating to sections 3101, 3104,
 21 3108, and 3112 to read as follows:

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1 “3101. General authority to employ; types of appointments.

2 “3104. Employment of specially qualified scientific and professional personnel and
3 senior-level personnel.

4 “[3108. Repealed.]

5 “[3112. Repealed.]”.

6 **SEC. 302. EXAMINATION, SELECTION, AND PLACEMENT.**

7 Chapter 33 of title 5, United States Code, is amended—

8 (1) by redesignating subchapters II through VIII as subchapters III through IX,
9 respectively;

10 (2) in section 3301—

11 (A) by amending the catchline to read as follows:

12 **“§ 3301. Civil service employment”**; and

13 (B) by inserting “(a)” before “The President may”;

14 (3) in section 3302—

15 (A) by striking the catchline and inserting “(b)” before “The President
16 may”; and

17 (B) in paragraph (2) by striking “sections 2951, 3304(a), 3321, 7202, and
18 7203 of this title” and inserting “sections 2951, 3303, 3310, 7202, and 7203”;

19 (4) by redesignating sections 3303 and 3304 as sections 3302 and 3303,
20 respectively;

21 (5) in section 3302 as redesignated, by amending the catchline to read as follows:
22

1 “§ 3302. Recommendations of Senators and Representatives”;

2 (6) in section 3303 as redesignated—

3 (A) by amending the catchline and subsections (a)-(e) to read as follows:

4 “§ 3303. Competitive service; examinations

5 “(a)(1) The President may prescribe rules which shall provide, as nearly as conditions of
6 good administration warrant, for open, competitive examinations for rating and ranking
7 applicants for appointment in the competitive service.

8 “(2) Competitive examinations shall—

9 “(1) be consistent with this chapter and with the merit system principles set forth
10 in section 2301;

11 “(2) relate to the duties of the position sought;

12 “(3) fairly evaluate the relative capacity and fitness of applicants for the position
13 sought; and

14 “(4) be conducted in accordance with regulations prescribed by the Director of the
15 Office of Personnel Management.

16 A competitive examination may include a written test, an evaluation of relative knowledge,
17 skills, and abilities, or competencies, or other means of assessment.

18 “(b)(1) The President may prescribe rules which shall provide, as nearly as conditions of
19 good administration warrant, authority for agencies to appoint, without regard to the provisions
20 of sections 3306-3309, candidates directly to positions for which—

21 “(A) public notice has been given; and

1 “(B) the Director has determined that–

2 “(i) there exists a severe shortage of candidates; or

3 “(ii) there is a critical hiring need.

4 “(2) The Director shall prescribe, by regulation, criteria for identifying such positions and
5 may delegate authority to make determinations under such criteria.

6 “(c) An individual may be appointed in the competitive service only if he or she has
7 passed an examination or is specifically excepted from examination under section 3301 or other
8 provision of law. Each appointment shall be consistent with the provisions of this chapter and
9 shall be only for the type of position for which public notice was given and for which the
10 application was submitted. Public notice of examination for a time-limited appointment under
11 section 3101(b)(2) shall include notice of potential eligibility for a career appointment.

12 “(d) The rules authorized by subsection (a) shall provide a process for applicants to
13 request reconsideration of a rejection of an application and of an examination rating. No further
14 administrative or judicial review of a reconsideration decision shall be permitted. The preceding
15 sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of
16 chapter 12 or any of the laws referred to in section 2302(d).

17 “(e)(1) The Director shall prescribe regulations regarding–

18 “(A) the terms and conditions under which an agency may consider applicants for
19 the competitive service; and

20 “(B) the manner and extent to which an individual in a position other than the
21 competitive service, such as the excepted service as defined under section 2103, the

legislative or judicial branch, or any private or nonprofit enterprise, may be considered in making appointments to a position in the competitive service, as defined in section 2102.

“(2) The regulations referred to in paragraph (1)(A) shall provide a process by which a person who could not file an application during the filing period because of service in the Armed Forces, or hospitalization continuing for 1 year or less following discharge from such service, may file an application after the closing date for the receipt of applications.

“(3) The regulations referred to in paragraph (1)(B) shall not grant any preference based on the fact of service in the legislative or judicial branch and shall be consistent with the principles of equitable competition and merit-based appointments.”; and

(B) in subsection (f)–

(i) in paragraph (2) by striking “a career or career-conditional appointment, as appropriate” and inserting “a career appointment”; and

(ii) in paragraph (4) by striking “section 3327” and inserting “section 3312”;

(7) by inserting after section 3303 as redesignated the following new section:

“§ 3303a. Establishment of appointing authorities

“Notwithstanding any other provision of law, and, upon publication in the Federal Register with opportunity for comment, the Director of the Office of Personnel Management may establish appointing authorities for entry into the competitive service and the excepted service. The Director may revoke, in whole or in part, any appointing authority established under this section.”;

1 (8) by repealing section 3305;

2 (9) by redesignating sections 3304a, 3307, and 3308 as sections 3303b, 3304, and

3 3305, respectively;

4 (10) in section 3304 as redesignated—

5 (A) by amending the catchline and subsections (a) and (b) to read as

6 follows:

7 **“§ 3304. Maximum entry age requirements**

8 “(a) Except as otherwise provided by this section, an agency may not establish a
9 maximum age requirement for entrance into the competitive service.

10 “(b) The Secretaries of Transportation and Defense, respectively, in coordination with the
11 Director of the Office of Personnel Management, may determine and fix the maximum age at
12 which an original appointment to a position as an air traffic controller may be made.”;

13 (B) by amending subsections (d) and (e) to read as follows:

14 “(d) The head of an agency may determine and fix the maximum age at which an original
15 appointment may be made to a position as a law enforcement officer or firefighter, as defined by
16 section 8331(20) or (21), respectively.

17 “(e) The head of an agency may determine and fix the maximum age at which an original
18 appointment may be made to a positions as a firefighter or law enforcement officer, as defined in
19 section 8401(14) or (17), respectively.”; and

20 (C) in subsection (f) by striking “maximum age limit for an original

21 appointment” and inserting “maximum age at which an original appointment may

1 be made”;

2 (11) in section 3305 as redesignated–

3 (A) in the catchline by inserting “**qualification standards**” after
4 “**Competitive service**”;

5 (B) by inserting “(b)” immediately before the first sentence;

6 (C) by inserting the following new subsection immediately after the
7 catchline:

8 “(a) The Director of the Office of Personnel Management may prescribe
9 Governmentwide qualification standards for career and time-limited appointment to positions or
10 approve agency-specific qualification standards, as appropriate, based on the requirements of the
11 work and for the purpose of conducting examinations under this chapter. Such standards shall be
12 published in such form as the Director may determine.”; and

13 (D) in subsection (b) as redesignated by subparagraph (B) by striking
14 “The Office of Personnel Management or other examining agency may not” and
15 inserting “Neither the Director nor any other examining agency may”;

16 (12) by inserting after section 3305 as redesignated the following new sections:

17 “§ 3306. **Preference eligibles; lists of eligibles; numerical ratings**

18 “(a) A preference eligible who receives a passing numerical rating in an examination for
19 entrance into the competitive service is entitled to additional points above his or her earned
20 rating, as follows–

1 “(1) a preference eligible under section 2108(3)(C)-(G) is entitled to 10 additional
2 points; and

3 “(2) a preference eligible under section 2108(3)(A) and (B) is entitled to 5
4 additional points.

5 “(b) The names of applicants who have passed an applicable examination for the
6 competitive service shall be entered on appropriate lists of eligibles in the following order—

7 “(1) for scientific and professional positions at GS-9 (or the equivalent) or higher,
8 in the order of their ratings, including points added under subsection (a); and

9 “(2) for all other positions—

10 “(A) disabled veterans who have a compensable service-connected
11 disability of 10 percent or more, in order of their ratings, including points added
12 under subsection (a); and

13 “(B) remaining applicants, in the order of their ratings, including points
14 added under subsection (a).

15 The names of preference eligibles shall be entered ahead of others having the same rating.

16 “(c) The Director of the Office of Personnel Management or an agency exercising
17 examining authority delegated under section 1104 shall hold an examination for a position to
18 which an appointment has been made within the preceding 3 years, on the application of an
19 individual who qualifies as a preference eligible under section 2108(3)(C)-(G). The

1 examination shall be held during the quarter following the application.

2 “(d) In examinations for positions of guards, elevator operators, messengers, custodians,
3 or other similar positions in the competitive service designated by the Director, competition is
4 restricted to preference eligibles as long as preference eligibles are available.

5 “(e) In examinations for the competitive service in which experience is an element of
6 qualification, a preference eligible is entitled to credit—

7 “(1) for service in the armed forces when his or her employment in a similar
8 vocation to that for which examined was interrupted by the service; and

9 “(2) for all experience material to the position for which examined, including
10 experience gained in religious, civic, welfare, service, and organizational activities,
11 regardless of whether the individual received pay for such activities.

12 “(f) If an appointing authority determines that, on the basis of evidence before it, a
13 preference eligible under section 2108(3)(C) who has a compensable service-connected
14 disability of 30 percent or more is not able to fulfill the medical standards or physical
15 requirements of the position, the appointing authority shall notify the Office of the determination
16 and, at the same time, the appointing authority shall notify the preference eligible of the reasons
17 for the determination and of the right to respond, within 15 days after the date of the notification,
18 to the Office. The Director shall require a demonstration by the appointing authority that the
19 notification was timely sent to the preference eligible’s last known address and shall, before the
20 selection of any other person for the position, make a final determination on the physical ability

1 of the preference eligible to perform the duties of the position, taking into account any additional
2 information provided in any such response. When the Director has completed the review of the
3 proposed disqualification on the basis of medical or physical limitation, it shall send its findings
4 to the appointing authority and the preference eligible. The appointing authority shall comply
5 with the findings of the Director. The functions of the Director under this subsection apply only
6 to competitive service positions and may not be delegated.

7 **“§ 3307. Preference eligibles; waiver of physical qualifications on appointment, transfer,**
8 **or**
9 **promotion**

10 “In determining qualifications of a preference eligible for examination for, appointment
11 or reinstatement in, or transfer or promotion to another position in the competitive service or an
12 Executive agency, the Director of the Office of Personnel Management or other examining
13 agency shall waive—

14 “(1) requirements as to age, height, and weight, unless the requirement is essential
15 to the performance of the duties of the position; and

16 “(2) physical requirements if, in the opinion of the Director or other examining
17 agency, after considering the recommendation of an accredited physician, the preference
18 eligible is physically able to perform efficiently the duties of the position.

19 This section does not apply to an appointment required by law to be made with the advice and
20 consent of the Senate.”;

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1 (13) by striking sections 3309 through 3317 and 3329;

2 (14) by redesignating sections 3318 and 3319 as sections 3308 and 3309,
3 respectively;

4 (15) in section 3308 as redesignated—

5 (A) in the catchline by striking “**from certificates**” and inserting
6 “selection using numerical rating”;

7 (B) in subsection (a)—

8 (i) by striking “The nominating or” and inserting “An”; and

9 (ii) by striking “on the certificate furnished under section 3317(a)
10 of this title”;

11 (C) in subsection (b)—

12 (i) in the first sentence of paragraph (1), by striking “on a
13 certificate”; and

14 (ii) in paragraph (4) by inserting after “the functions of the Office
15 under this subsection” the following: “apply only to competitive service
16 positions and”;

17 (D) in subsection (c) by striking “register” and inserting “list”; and

18 (E) by adding at the end the following new subsection:

19 “(d) In the case of lists of eligibles issued from a standing register, when an appointing
20 authority, for reasons considered sufficient by the Director of the Office of Personnel
21 Management, has three times considered and passed over a preference eligible who was certified

1 from a register, certification of the preference eligible for appointment may be discontinued.

2 However, the preference eligible is entitled to advance notice of discontinuance of certification
3 in accordance with regulations prescribed by the Director.”;

4 (16) in section 3309 as redesignated—

5 (A) by amending the catchline to read as follows:

6 “§ 3309. **Competitive service; selection using category rating**”;

7 (B) in subsection (c)(2) by striking “3317(b) or 3318(b), as applicable,”
8 and inserting “3308(b)”;

9 (C) by redesignating subsections (d) and (e) as subsections (e) and (f),
10 respectively, and inserting after subsection (c) the following new subsection:

11 “(d)(1) When an appointing authority, for reasons considered sufficient by the Director of
12 the Office of Personnel Management, has considered and passed over a preference eligible in
13 accordance with the provisions of section 3308(b) for the same position, certification of the
14 preference eligible for appointment to such position may be discontinued.

15 “(2) In the case of lists of eligibles issued from a standing register, when an appointing
16 authority, for reasons considered sufficient by the Director, has three times considered and
17 passed over a preference eligible who was certified from a register, certification of the
18 preference eligible may be discontinued. However, the preference eligible is entitled to advance
19 notice of discontinuance of certification in accordance with regulations prescribed by the
20 Director.”;

21 (17) by redesignating section 3321 as section 3310;

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(18) in section 3310 as redesignated—

(A) by amending the catchline to read as follows:

“§ 3310. Competitive service; probationary period”;

(B) in subsection (a)—

(i) by striking “President may” and inserting “Director of the Office of Personnel Management shall”; and

(ii) by amending paragraph (1) to read as follows;

“(1) for a career appointment or a time-limited appointment of specified duration; and”;

(C) in subsection (b) by striking “grade and pay” and inserting “grade, or band and pay rate (as defined in regulations prescribed by the Director)”; and

(D) by adding at the end the following new subsection:

“(d) For the purpose of this chapter, a probationary period is the time during which the agency determines whether the employee fulfills the requirements of the employee’s new position.”;

(19) by inserting after section 3310 as redesignated the following new sections:

“§ 3311. Noncompetitive appointments

“(a)(1) Scientific and professional positions established under section 3104 are in the competitive service. However, an appointment by an agency to such a position may be made without competitive examination on approval of the qualifications of the proposed appointee by the Director of the Office of Personnel Management on the basis of standards developed by the

1 agency in accordance with criteria specified in regulations prescribed by the Director.

2 “(2) This section does not apply to positions established under section 3104(c).

3 “(3) The Director shall prescribe such regulations as may be necessary to carry out this
4 subsection.

5 “(b) An agency may make a noncompetitive time-limited or career appointment of a
6 disabled veteran who has a compensable service-connected disability of 30 percent or more.

7 “(c)(1) For the purpose of this subsection, the term ‘technician’ has the meaning given
8 such term by section 8337(h)(1).

9 “(2) Notwithstanding any other provision of law or regulation, an individual who served
10 for at least 3 years as a technician acquires a competitive status for transfer to the competitive
11 service if such individual—

12 “(A) is involuntarily separated from service as a technician other than by removal
13 for cause on charges of misconduct;

14 “(B) passes a suitable noncompetitive examination; and

15 “(C) transfers to the competitive service within 1 year after separating from
16 service as a technician.

17 “(d)(1) For the purpose of this subsection, the term ‘military reserve technician’ has the
18 meaning given that term by section 8401(30).

19 “(2) The Secretary of Defense shall take such steps as may be necessary to ensure that,
20 except as provided in paragraph (4), any military reserve technician who is involuntarily
21 separated from technician service, after completing at least 15 years of such service and 20 years

1 of service creditable under section 12732 of title 10, by reason of ceasing to satisfy the condition
2 described in section 8401(30)(B), shall, if appropriate written application is submitted within 1
3 year after the date of separation, be given placement consideration through the Department of
4 Defense Priority Placement Program for a position described in paragraph (3) not later than 6
5 months after the date of the application.

6 “(3) The position to be offered shall be a position—

7 “(A) that does not require military membership;

8 “(B) within the Department of Defense;

9 “(C) for which the individual is qualified; and

10 “(D) for which the rate of basic pay preserves to the maximum extent possible the
11 rate last received for technician service before separation.

12 “(4) This subsection shall not apply in the case of—

13 “(A) an involuntary separation for cause on charges of misconduct; or

14 “(B) a technician who, as of the date of application under this section, is eligible
15 for immediate (including for disability) or early retirement under subchapter III of
16 chapter 83 or under chapter 84.

17 “(5) The Secretary of Defense shall, in consultation with the Director of the Office of
18 Personnel Management, prescribe such regulations as may be necessary to carry out this
19 subsection.

20 **“§ 3312. Employment information**

21 “(a) For purposes of this section, ‘agency’ means the Government Printing Office and an

1 Executive agency other than an agency in which all the positions are excepted from the
2 competitive service.

3 “(b) Subject to such regulations as the Director of the Office of Personnel Management
4 may prescribe, each agency shall promptly notify the Office and the employment offices of the
5 United States Employment Service, unless the Office provides such information on behalf of the
6 agency, of—

7 “(1) opportunities for participation in competitive examinations;

8 “(2) each vacant position in the agency which is in the competitive service or the
9 Senior Executive Service and for which the agency seeks applications from persons
10 outside the Federal service;

11 “(3) the period during which applications will be accepted; and

12 “(4) the conditions under which applicants may be considered, including any
13 specific area of consideration.

14 “(c)(1) The Director shall establish and keep current a comprehensive list of all
15 announcements of vacant positions in the competitive service within each agency that are to be
16 filled by appointment for more than 1 year and for which applications are being (or will soon be)
17 accepted from outside the agency’s workforce.

18 “(2) Included for any position listed shall be—

19 “(A) a brief description of the position, including its title, tenure, location, and
20 rate of pay;

21 “(B) application procedures, including who may apply, the period within which

1 applications may be submitted and procedures for obtaining additional information; and

2 “(C) any other information which the Director considers appropriate.

3 “(3) The list shall be available to all members of the public.

4 “(d) The Director shall prescribe such regulations as may be necessary to carry out this
5 section. Any requirement under this section that agencies notify the Office as to the availability
6 of any vacant positions shall be designed so as to avoid any duplication of information otherwise
7 required to be furnished under this section or other provision of law.

8 “(e) The Office may, to the extent the Director determines appropriate, charge such fees
9 to agencies for services provided under this section and for related Federal employment
10 information. The Office shall retain such fees to pay the costs of providing such services and
11 information.”;

12 (20) by redesignating section 3320 as section 3313;

13 (21) by amending section 3313 as redesignated to read as follows:

14 **“§ 3313. Excepted service; selection; probationary period**

15 “The appointing authority shall select for appointment to each vacancy in the excepted
16 service in the executive branch from the qualified applicants in the same manner and under the
17 same conditions required for the competitive service by sections 3305(b)-3309. This section
18 does not apply to an appointment required by law to be made with the advice and consent of the
19 Senate. An individual appointed under this section shall be subject to a probationary period
20 consistent with section 3310.”;

21 (22) by inserting after section 3313 as redesignated the following new subchapter

1 heading:

2 “SUBCHAPTER II—MISCELLANEOUS PROVISIONS”;

3 (23) by redesignating sections 3324 and 3328 as sections 3321 and 3322,

4 respectively;

5 (24) in section 3321 as redesignated—

6 (A) in the catchline by striking “**positions classified above GS-15**” and
 7 inserting “**senior-level positions**”;

8 (B) in subsection (a) by amending the first sentence to read as follows:

9 “An appointment by an agency to a senior-level position established under
 10 section 3104 may be made only on approval of the qualifications of the proposed
 11 appointee by the Director of the Office of Personnel Management on the basis of
 12 qualification standards developed by the agency in accordance with criteria
 13 specified in regulations prescribed by the Director.”;

14 (25) in section 3323—

15 (A) by amending subsection (a) to read as follows:

16 “(a) An individual separated on account of age under a statute or regulation providing for
 17 retirement on account of age is not eligible for appointment to a position in the Federal
 18 Government which is subject to such a law or regulation. The President, upon determining that
 19 the public interest so requires, may except an individual from this subsection by Executive order.
 20 This subsection does not apply to an individual named by a statute providing for the continuance
 21 of the individual in the civil service.”;

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(B) in subsection (b)(1) by striking “other statutes” and inserting “any other provision of law”; and

(C) in subsection (d) by striking the last sentence;

(26) by redesignating section 3326 as section 3324;

(27) by striking sections 3325, 3327, and 3330;

(28) by redesignating sections 3330a-3330c as sections 3325-3327, respectively;

(29) in section 3326 as redesignated by striking “3330a(d)” each time it appears and inserting “3325(d)”;

(30) in section 3327 as redesignated—

(A) by striking “3330a” each time it appears and inserting “3325”; and

(B) by striking “3330b” each time it appears and inserting “3326”;

(31) by inserting after section 3327 as redesignated the following new section:

“§ 3328. Regulations

“The Director of the Office of Personnel Management may prescribe regulations to carry out the purposes of this subchapter.”;

(32) by amending section 3341 to read as follows:

“§ 3341. Details; Executive agencies and military departments

“Subject to regulations prescribed by the Director of the Office of Personnel Management, the head of an Executive agency or military department may detail employees, except those required by law to be engaged exclusively in some specific work, among the bureaus and offices of the agency or department or to another Executive agency or military

department.”;

(33) by inserting after section 3349d the following new section:

“§ 3349e. Regulations

“The Director of the Office of Personnel Management may prescribe regulations to carry out the purposes of this subchapter.”;

(34) by repealing sections 3351, 3362, and 3363;

(35) in section 3361—

(A) by striking “section 3302 of this title” and inserting “section 3301(b);

and

(B) in the second sentence by striking “of this title”;

(36) in section 3395(e)(2)(A) by striking “section 4314(b)(3) of this title” and inserting “section 4324(b)(3)”; and

(37) by amending the table of sections to read as follows:

“CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

“SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

“Sec.

“3301. Civil service employment.

“3302. Recommendations of Senators and Representatives.

“3303. Competitive service; examinations.

“3303a. Establishment of appointing authorities.

“3303b. Competitive service; career appointment after 3 years temporary service.

“3304. Maximum entry age requirements.

“3305. Competitive service; qualification standards; examinations; educational requirements prohibited; exceptions.

“3306. Preference eligibles; lists of eligibles; numerical ratings.

“3307. Preference eligibles; waiver of physical qualifications on appointment, transfer, or

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1 promotion.

2 “3308. Competitive service; selection using numerical rating.

3 “3309. Competitive service; selection using category rating.

4 “3310. Competitive service; probationary period.

5 “3311. Noncompetitive appointments.

6 “3312. Employment information.

7 “3313. Excepted service; selection; probationary period.

8 “SUBCHAPTER II—MISCELLANEOUS PROVISIONS

9 “3321. Appointments to senior-level and scientific and professional positions.

10 “3322. Selective Service registration.

11 “3323. Mandatory separation; reemployment of annuitants.

12 “3324. Appointments of retired members of the armed forces to positions in the Defense
13 Department.

14 “3325. Preference eligibles; administrative redress.

15 “3326. Preference eligibles; judicial redress.

16 “3327. Preference eligibles; remedy.

17 “3328. Regulations.

18 “SUBCHAPTER III—OATH OF OFFICE

19 “3331. Oath of office.

20 “3332. Officer affidavit; no consideration paid for appointment.

21 “3333. Employee affidavit; loyalty and striking against the Government.

22 “SUBCHAPTER IV—DETAILS

23 “3341. Details; Executive agencies and military departments.

24 “[3342. Repealed.]

25 “3343. Details; to international organizations.

26 “3344. Details; administrative law judges.

27 “3345. Acting officer.

28 “3346. Time limitation.

29 “3347. Exclusivity.

30 “3348. Vacant office.

31 “3349. Reporting of vacancies.

32 “3349a. Presidential inaugural transitions.

33 “3349b. Holdover provisions relating to certain independent establishments.¹

34 “3349c. Exclusion of certain officers.

35 “3349d. Notification of intent to nominate during certain recesses or adjournments.

36 “3349e. Regulations.

“SUBCHAPTER V—TRANSFERS

“[3351. Repealed.]

“3352. Preference in transfers for employees making certain disclosures.

“SUBCHAPTER VI—PROMOTION

“3361. Promotion; competitive service; examination.

“[3362. Repealed.]

“[3363. Repealed.]

“[3364. Repealed.]

“SUBCHAPTER VII—ASSIGNMENTS TO AND FROM STATES

“3371. Definitions.

“3372. General provisions.

“3373. Assignments of employees to State or local governments.

“3374. Assignments of employees from State or local governments.

“3375. Travel expenses.

“3376. Regulations.

“SUBCHAPTER VIII—AIR TRAFFIC CONTROLLERS

“3381. Training.

“3382. Involuntary separation for retirement.

“3383. Determinations; review procedures.

“3384. Regulations.

“3385. Effect on other authority.

“SUBCHAPTER IX—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE

SENIOR EXECUTIVE SERVICE

“3391. Definitions.

“3392. General appointment provisions.

“3393. Career appointments.

“[3393a. Repealed.]

“3394. Noncareer and limited appointments.

“3395. Reassignment and transfer within the Senior Executive Service.

“3396. Development for and within the Senior Executive Service.

“3397. Regulations.”.

SEC. 303. CONFORMING AND REALIGNING AMENDMENTS.

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1 Title 5, United States Code, is amended—

2 (1) by amending section 2302(e)(1)(A) of to read as follows:

3 “(A) Sections 2108, 3303(e)(1), 3306, 3307, 3308, 3309, 3313, 3352,
4 3501, 3502(b), 3504, and (with respect to a preference eligible referred to in
5 section 7511(a)(1)(B)) subchapter II of chapter 75 and section 7701.”;

6 (2) in section 3592(b)(2)(A) by striking “section 4314(b)(3) of this title” and
7 inserting “section 4324(b)(3)”;

8 (3) in sections 3593(a)(2), 3594(b)(1), and 3595(a) by striking “subchapter II of
9 chapter 43 of this title” and inserting “subchapter III of chapter 43”; and

10 (4) by inserting after chapter 95 the following new chapter:

11 **“CHAPTER 96—SECURITIES AND EXCHANGE COMMISSION**

12 “Sec.

13 “9601. Securities and Exchange Commission.”;

14 (3) by redesignating section 4802 as section 9601 and amending the catchline to
15 read as follows:

16 **“§ 9601. Securities and Exchange Commission”;** and

17 (4) by repealing chapter 48.

18 **TITLE IV—LABOR-MANAGEMENT RELATIONS; ADVERSE ACTIONS;**
19 **APPEALS; MERIT SYSTEMS PROTECTION BOARD**

20 **SEC. 401. LABOR-MANAGEMENT RELATIONS.**

21 Chapter 71 of title 5, United States Code, is amended—

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1 (1) in section 7103(a)–

2 (A) by amending paragraph (9)(C)(ii) to read as follows:

3 “(ii) any claimed violation, misinterpretation, or misapplication of
4 any law, rule, or regulation issued for the purpose of affecting conditions
5 of employment, including determinations regarding an employee’s pay,
6 except the exercise of managerial discretion or judgment in such
7 determinations.”; and

8 (B) by adding at the end the following new paragraph:

9 “(19) ‘emergency’ means an actual or potential situation requiring immediate
10 action to carry out critical or essential agency functions, including, but not limited to, any
11 situation involving or potentially involving–

12 “(A) an adverse effect on agency resources;

13 “(B) an increase in agency workload due to unforeseeable events;

14 “(C) changed mission requirements imposed on the agency by external
15 authorities; or

16 “(D) any budgetary exigency caused in whole or in part by authorities
17 external to the agency.”;

18 (2) in section 7105(a)–

19 (A) by inserting at the end new paragraphs (3) and (4) as follows:

1 “(3)(A) Notwithstanding any other provision of this chapter, the Chairman shall
2 establish a single, integrated process to resolve all matters associated with a bargaining
3 dispute. The Chairman shall prescribe regulations establishing procedures for the fair,
4 impartial, and expeditious assignment and disposition of such cases, including all
5 processing time limits. These procedures may provide for the use of a combination of
6 mediation, fact finding, and any other appropriate dispute resolution method to resolve all
7 such matters. These procedures shall be applicable in all cases involving two or more of
8 the following—

9 “(i) unfair labor practices raised under section 7116;

10 “(ii) negotiability disputes raised under section 7117; or

11 “(iii) bargaining impasses raised under section 7119.

12 “(B) In establishing and implementing the procedures authorized in subparagraph
13 (A), the Chairman shall have the authority to direct the General Counsel, the Federal
14 Service Impasses Panel, or both, to submit a matter before them to the Authority for
15 appropriate action or to take whatever action is appropriate pursuant to the procedures the
16 Chairman establishes under this paragraph.

17 “(4) The Chairman may in his or her sole discretion call a meeting of the
18 members of the Authority without regard to section 552b.”;

19 (B) by amending subsection (d) to read as follows:

1 “(d) The Chairman shall appoint an Executive Director, regional directors, administrative
2 law judges under section 3105, and other individuals as he or she may from time to time find
3 necessary for the proper performance of the Authority’s functions. The Chairman may delegate
4 to officers and employees appointed under this subsection authority to perform such duties and
5 make such expenditures as may be necessary.”;

6 (C) in subsection (e)–

7 (i) by striking “The Authority” in each place it appears and
8 inserting “The Chairman”; and

9 (ii) by striking “its” each place it appears;

10 (D) in the first sentence of subsection (f) by striking “If the Authority” and
11 inserting “If the Chairman”; and

12 (E) in subsection (g)(3)–

13 (i) by striking “may”; and

14 (ii) by inserting immediately before the period the following:

15 “, but in no case may the Authority impose *status quo ante* remedies in
16 cases in which there has been a finding of a violation of section 7116(a)(5) or (6)
17 where such remedies would adversely impact the agency’s or activity’s mission or
18 budget, or the public interest.”;

19 (3) by amending section 7106(a)(2)(D) to read as follows:

1 “(D) to take whatever actions may be necessary to—

2 “(i) prepare for, practice for, or prevent any emergency; and

3 “(ii) carry out the agency mission during emergencies.”;

4 (4) in section 7114—

5 (A) by amending subsection (a)(2) to read as follows:

6 “(2) An exclusive representative of an appropriate unit shall be given the
7 opportunity to be represented at—

8 “(A) any discussion between one or more agency representatives
9 and one or more bargaining unit employees concerning any grievance
10 filed under the negotiated grievance procedure;

11 “(B) any examination of a bargaining unit employee by a
12 representative of the agency in connection with an investigation if the
13 employee reasonably believes that the examination may result in
14 disciplinary action against the employee and the employee requests such
15 representation.”; or

16 “(C) any formal discussion between one or more management
17 officials of the agency and one or more bargaining unit employees, the
18 purpose of which is to discuss, announce, or discuss and announce, new or
19 substantially changed personnel policies, practices, or working conditions.

20 This right does not apply to meetings between one or more management

1 officials and one or more bargaining unit employees for the purpose of
2 discussing operational matters where any discussion of personnel policies,
3 practices or working conditions—

4 “(i) constitutes a reiteration or application of one or more
5 existing personnel policies, practices, or working conditions;

6 “(ii) is incidental or otherwise peripheral to the announced
7 purpose of the meeting; or

8 “(iii) does not result in an announcement of a change to, or
9 a promise to change, one or more existing personnel policies,
10 practices, or working conditions.”;

11 (B) by amending subsection (b)(4) to read as follows:

12 “(4) in the case of an agency, to furnish information to an exclusive
13 representative, or its authorized representative, when—

14 “(A) the exclusive representative has requested such information and
15 demonstrated a particularized need for the information in order to perform its
16 representational functions in grievance or appeal proceedings, or in negotiations;

17 “(B) such information exists, is normally maintained in the regular course
18 of business, and is reasonably available; and

19 “(C) disclosure is not prohibited by law; and”; and

20 (C) by redesignating subsection (c) as subsection (d) and inserting after
21 subsection (b) a new subsection (c) as follows:

1 “(c) Disclosure of information in subsection (b)(4) does not include–

2 “(1) disclosure prohibited by law or regulations, including, but not limited to, this
3 chapter, Governmentwide rules and regulations, and Executive orders;

4 “(2) disclosure of information if adequate alternative means exist for obtaining
5 the requested information, or if proper discussion, understanding, or negotiation of a
6 particular subject within the scope of collective bargaining is possible without recourse to
7 the information;

8 “(3) internal agency guidance, counsel, advice, or training for managers or
9 supervisors relating to collective bargaining; and

10 “(4) personal addresses, personal telephone numbers, personal email addresses, or
11 any other information not related to an employee’s work.”;

12 (5) in section 7117 by redesignating subsections (a) through (d) as subsections (b)
13 through (e), respectively, and inserting after the catchline the following new subsection:

14 “(a) The obligation of any agency or any labor organization to bargain or consult extends
15 to any otherwise negotiable subject only if the effect of the change on the bargaining unit, or that
16 portion of the bargaining unit affected by the change, is foreseeable, substantial, and significant
17 in terms of impact and duration.”;

18 (6) in section 7120 by striking “Assistant Secretary of Labor for Labor
19 Management Relations” and “Assistant Secretary” wherever those terms appear and
20 inserting “Secretary of Labor”;

21 (7) in section 7121–

1 (A) in subsection (a) by striking “administrative”;

2 (B) in subsection (c) by amending paragraph (5) to read as follows:

3 “(5) any subject not within the definition of ‘grievance’ in section 7103 (such as
4 the classification of any position), except for an adverse action under applicable
5 authority, including chapter 75, which is not otherwise excluded by this subsection.”;

6 (C) by amending subsection (e) to read as follows:

7 “(e)(1) For matters appealable to the Merit Systems Protection Board, an aggrieved
8 employee may raise the matter under an applicable appellate procedure or under the negotiated
9 grievance procedure, but not both. An employee shall be deemed to have exercised his or her
10 option under this section when the employee timely files an appeal under the applicable appellate
11 procedures or a grievance in accordance with the provisions of the parties’ negotiated grievance
12 procedure, whichever occurs first.

13 “(2) An arbitrator hearing a matter appealable under chapter 77 is bound by section
14 7701(c).

15 “(3) For purposes of review and appeal, an arbitration award under this subsection is
16 considered equivalent to a decision issued under section 7701(b) and is subject to review under
17 procedures described in section 7701(e).”;

18 (D) by striking subsection (f) and redesignating subsection (g) as
19 subsection (f);

20 (E) by amending subsection (f)(4) as redesignated by subparagraph (C) to
21 read as follows:

1 “(4) For the purpose of this subsection, an employee is considered to have
2 elected one of the following, whichever election occurs first:

3 “(A) the procedure described in paragraph (3)(A) if such employee has
4 timely filed a notice of appeal under the applicable appellate procedures;

5 “(B) the procedure described in paragraph (3)(B) if such employee has
6 timely filed a grievance in writing in accordance with the provisions of the
7 parties’ negotiated procedure; or

8 “(C) the procedure described in paragraph (3)(C) if such employee has
9 sought corrective action from the Office of Special Counsel by making an
10 allegation under section 1214(a)(1).”;

11 (F) by inserting after subsection (f) as redesignated a new subsection (g) to
12 read as follows:

13 “(g) An arbitrator hearing a matter under this chapter is bound by all applicable laws,
14 rules and regulations, including applicable provisions of this chapter, and their legal
15 precedents.”; and

16 (G) by adding at the end a new subsection (i) as follows:

17 “(i)(1) The only performance appraisal an employee may grieve is a performance rating
18 of record that has not been raised in connection with an appeal of an adverse action under
19 chapter 77. Once an employee raises a performance rating of record issue in an appeal under
20 chapter 77, any pending grievance or arbitration concerning that rating of record shall be
21 dismissed with prejudice.

“(2) An arbitrator may cancel a performance rating of record upon a finding that the agency applied the employee’s established performance requirements or expectations in violation of applicable law, agency rule or regulation, or provision of a collective bargaining agreement in a manner prejudicial to the grievant. An arbitrator who has properly canceled an employee’s rating of record may order the agency to change the grievant’s rating of record only when the arbitrator is able to determine the rating of record that the agency would have given but for the violation. When an arbitrator is unable to determine what the employee’s rating of record would have been but for the violation, the arbitrator shall remand the case to the agency for re-evaluation. An arbitrator shall not conduct an independent evaluation of the employee’s performance or otherwise substitute his or her judgment for that of the supervisor.”;

(8) in section 7122(a) by amending the first sentence to read as follows:

“Either party to arbitration under this chapter may file with the Authority an exception to any arbitration award, except an award issued in connection with an appealable matter under section 7513(b), or a similar matter arising under other personnel systems, which is considered equivalent to a decision issued under section 7701(b) and is subject to review under procedures described in section 7701(e).”.

SEC. 402. ADVERSE ACTIONS.

Chapter 75 of title 5, United States Code, is amended—

(1) by amending section 7501 to read as follows:

“7501. Definitions; application”

“(a) For the purpose of this subchapter—

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1 “(1) ‘employee’ means–

2 “(A) an individual in the competitive service (other than a preference
3 eligible) who has completed any required probationary period under an initial
4 appointment; and

5 “(B) a preference eligible in the competitive service who has completed 1
6 year of creditable service; and

7 “(2) ‘suspension’ means the placing of an employee, for disciplinary or
8 performance reasons, in a temporary status without duties and pay.

9 “(b) This subchapter does not apply to an employee who–

10 “(1) is serving a time-limited appointment of unspecified duration, unless that
11 employee is a preference eligible in the competitive service who has completed 1 year of
12 creditable service; or

13 “(2) is serving a time-limited appointment of 1 year or less.”;

14 (2) in the heading for subchapter II by striking “GRADE OR PAY” and inserting
15 “PAY, DEMOTION”;

16 (3) in section 7511–

17 (A) in subsection (a)–

18 (i) by amending paragraph (1) to read as follows:

19 “(1) ‘employee’ means–

20 “(A) an individual in the competitive or excepted service (other than a
21 preference eligible) who has completed any required probationary period under an

1 initial appointment; and

2 “(B) a preference eligible in the competitive or excepted service who has
3 completed 1 year of creditable service;”;

4 (ii) in paragraphs (3) and (4) by striking “and”;

5 (iii) in paragraph (5) by deleting the period and inserting a
6 semicolon; and

7 (iv) by inserting the following new paragraphs immediately after
8 paragraph (5):

9 “(6) ‘demotion’ means a reduction in grade, a reduction to a lower band within
10 the same career/occupational subgroup (or group if there are no subgroups), or a
11 reduction to a lower band in a different career/occupational group or to a different
12 subgroup in the same career/occupational group under regulations issued by the Director
13 of the Office of Personnel Management; and

14 “(7) ‘probationary period’ means that period established pursuant to section 3310
15 or 3313.”; and

16 (B) in subsection (b)–

17 (i) by redesignating paragraphs (1) through (10) as paragraphs (3)
18 through (12), respectively;

19 (ii) by inserting before paragraph (3), as redesignated, the
20 following new paragraphs:

21 “(1) who is serving a time-limited appointment of unspecified duration unless that

1 employee is a preference eligible who has completed 1 year of creditable service;

2 “(2) who is serving a time-limited appointment of 1 year or less;” and

3 (iii) in paragraph (9) as redesignated, by striking “General
4 Accounting” and inserting “Government Accountability”;

5 (4) in section 7512—

6 (A) in paragraph (3) by striking “reduction in grade” and inserting
7 “demotion”; and

8 (B) by amending subparagraph (C) to read as follows:

9 “(C) a reduction in pay, or a demotion of a supervisor or manager who
10 does not satisfactorily complete the probationary period under section 3310(a)(2),
11 or section 3313, if the employee is returned to a grade or band and pay rate no
12 lower than that held immediately prior to becoming a supervisor or manager,” ;

13 (C) by striking subparagraph (D);

14 (D) by redesignating subparagraph (E) as subparagraph (D);

15 (E) in subparagraph (D) as redesignated by striking “of this title.” and
16 inserting “ , or”; and

17 (F) by inserting after that subparagraph (D) the following new
18 subparagraphs:

19 “(E) an action taken against an employee during a probationary period
20 under section 3310(a)(1) or 3313, except when such action is taken against a
21 preference eligible who has completed the first year of such probationary period,

1 “(F) an action that terminates a temporary promotion or a temporary
2 within-band increase in pay and returns the employee to a grade or band and pay
3 rate no lower than that held immediately prior to the temporary promotion or
4 temporary within-band increase in pay, if the agency informed the employee that
5 the temporary promotion or within-band increase was to be of limited duration,

6 “(G) an action taken against an employee serving on a time-limited
7 appointment of unspecified duration, when such type of appointment is specified
8 as a basic condition of employment at the time the appointment was made, unless
9 that employee is a preference eligible who has completed 1 year of creditable
10 service; or

11 “(H) termination of a time-limited appointment made under section
12 3101(b)(2) on the expiration date, if such expiration is specified as a basic
13 condition of employment at the time the appointment was made.”;

14 (5) in section 7531—

15 (A) in paragraph (6) by striking “the Coast Guard” and inserting “the
16 Department of Homeland Security”; and

17 (B) in paragraph (7) by striking “Atomic Energy Commission” and
18 inserting “Nuclear Regulatory Commission and the Federal Energy Regulatory
19 Commission”; and

20 (6) in section 7533 by striking “Atomic Energy Commission” both places it
21 appears and inserting “Nuclear Regulatory Commission and the Federal Energy

1 Regulatory Commission”.

2 **SEC. 403. APPEALS.**

3 Chapter 77 of title 5, United States Code, is amended—

4 (1) in section 7701—

5 (A) by amending subsection (a)(1) to read as follows:

6 “(1) to a hearing for which a transcript will be kept except that the scope of the
7 hearing may be limited or no hearing held if the Board determines on its own initiative or
8 upon the request of either party that some or all facts are not in genuine dispute; and”;

9 (B) in subsection (c)—

10 (i) by amending paragraph (1) to read as follows:

11 “(1) Subject to paragraph (3), the decision of the agency shall be sustained under
12 subsection (b) only if the agency's decision is supported by a preponderance of the
13 evidence.”;

14 (ii) by redesignating paragraph (2) as paragraph (3); and

15 (iii) by inserting after paragraph (1) a new paragraph (2) to read as
16 follows:

17 “(2) Subject to paragraph (3), the penalty imposed in any action taken under
18 chapter 75 shall not be overturned unless it is totally unwarranted in light of all pertinent
19 circumstances. In evaluating the appropriateness of the penalty, the Board shall give
20 primary consideration to the impact of the sustained misconduct or poor performance on
21 the mission of the agency or activity as determined by the agency.”; and

(2) in section 7703(d) by striking the last sentence.

SEC. 404. MERIT SYSTEMS PROTECTION BOARD.

Section 1204 of title 5, United States Code, is amended—

(1) by amending subsection (g) to read as follows:

“(g) The Chairman of the Board may delegate to any employee of the Board authority to perform any administrative functions under this title.”;

(2) by redesignating subsections (j), (k), (l), and (m) as subsections (k), (l), (m), and (n), respectively; and

(3) by inserting after subsection (i) a new subsection (j) as follows:

“(j) The Chairman may in his or her sole discretion call a meeting of the members of the Board without regard to section 552b.”; and

(4) in subsection (k) as redesignated by inserting after the first sentence the following:

“The Chairman may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.”.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. SAVINGS PROVISIONS.

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1 The amendments made by sections 402 and 403 of this Act do not apply to adverse
2 actions proposed prior to the effective date of those amendments.

3 **SEC. 502. TECHNICAL AND CONFORMING AMENDMENTS; OTHER REFERENCES.**

4 (a) Effective on the date of enactment of this Act, the following provisions of law are
5 repealed:

6 (1) in title 5, United States Code—

7 (A) section 5306; and

8 (B) subchapter IX of chapter 53; and

9 (2) sections 209, 404, and 406 of the Federal Employees Pay Comparability Act
10 of 1990, as contained in section 529 of Public Law 101-509.

11 (b) Effective on the first day of the first pay period beginning on or after January 1, 2010,
12 the following provisions of law are repealed:

13 (1) in title 5, United States Code—

14 (A) chapter 51;

15 (B) sections 4505a, 5304, 5304a, 5305, and 5755; and

16 (C) subchapters III, IV, and VI of chapter 53;

17 (2) section 4 of Public Law 103-89; and

18 (3) sections 403 and 405 of the Federal Pay Comparability Act of 1990, as
19 contained in section 529 of Public Law 101-509.

20 (c) Notwithstanding any other provision of law, and except as otherwise provided by this
21 Act, any reference in a provision of law to:

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1 (1) the maximum rate under section 5376 of title 5, United States Code, as
2 provided prior to the effective date of the amendment to that section under section 503(c)
3 of this Act, shall be considered a reference to the rate of basic pay payable for level IV of
4 the Executive Schedule; and

5 (2) effective on the first day of the first pay period beginning on or after January
6 1, 2010, the maximum rate of basic pay for the General Schedule or for grade GS-15 of
7 the General Schedule shall be considered to be a reference to the rate that is 90 percent of
8 the rate for level V of the Executive Schedule or, if any locality or geographic payment is
9 added to basic pay, the rate for level IV of the Executive Schedule.

10 **SEC. 503. EFFECTIVE DATE; TRANSITION; APPLICATION.**

11 (a) Except as otherwise provided by this section, the amendments made by Titles I
12 through IV of this Act shall take effect 180 days after the date of enactment.

13 (b) The amendments made by section 203(4) and (5) shall take effect on the date of
14 enactment of this Act.

15 (c) The amendments made by section 203(1)(D)(iv)(I)(aa) and (1)(F) shall take effect on
16 the first day of the first pay period beginning on or after January 1, 2010.

17 (d) The Director of the Office of Personnel Management may—

18 (1) provide, by regulation, for an orderly transition with respect to the movement
19 of employees from classification and pay systems under chapters 51 and 53 of title 5,
20 United States Code, to classification and pay systems under chapter 52 of that title,
21 including the modification of affected provisions of such chapters 51 and 53 as it deems

1 necessary, such as section 5304 concerning the establishment and adjustment of locality-
2 based comparability payments; and

3 (2) implement selected portions of chapter 52 in advance of full implementation
4 of such chapter, subject to any necessary regulations prescribed by the Director, for the
5 purpose of expediting the application of market-based pay provisions; and

6 (3) continue, until the application of such chapter 52 to all employees as provided
7 in subsection (d)(1), to make adjustments under such chapter 53.

8 (e)(1) Notwithstanding any other provision of this Act, the head of each covered agency
9 shall apply chapter 52 of title 5, United States Code, as established in section 202 of this Act, to
10 all eligible employees no later than the first day of the first pay period beginning on or after
11 January 1, 2010, or, in the event of an emergency declared by the President, by such date as the
12 Director shall determine.

13 (2) Each agency with eligible employees who are not covered by such chapter 52 as of
14 January 31, 2008, shall submit to the Office no later than March 31, 2008, a plan for applying
15 that chapter to all such employees prior to the deadline established in paragraph (1).

16 (3) Until an agency makes a determination under this subsection regarding a category of
17 employees, employees in such category shall continue to be covered by the Federal laws and
18 regulations that would apply to them in the absence of chapter 52.

19 (f) After a category of employees has been covered by chapter 52 in accordance with
20 subsection (e), coverage of such category may not be rescinded.